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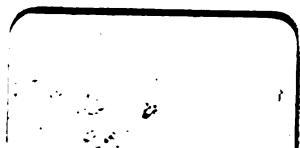


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Iowa. Laws, statutes, etc. Codes
McCLAIN'S

ANNOTATED STATUTES

OF THE

STATE OF IOWA,

SHOWING THE

GENERAL STATUTES IN FORCE JULY 4, 1880,

EMBRACING

THE CODE OF 1873 AS AMENDED, AND ALL PERMANENT, GENERAL AND
PUBLIC ACTS OF THE FIFTEENTH, SIXTEENTH, SEVENTEENTH
AND EIGHTEENTH GENERAL ASSEMBLIES, WITH A BRIEF
DIGEST UNDER EACH SECTION, OF THE DECISIONS
RELATING THERETO.

By EMLIN McCLAIN, Esq.,

OF THE DES MOINES BAR.

VOLUME I.

CHICAGO:
CALLAGHAN & COMPANY.
1884.

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884

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MAY 25 1920

STEREOTYPED AND PRINTED
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THE CHICAGO LEGAL NEWS CO.

TO
WILLIAM G. HAMMOND, LL.D.,
CHANCELLOR OF THE LAW DEPARTMENT
OF THE
STATE UNIVERSITY OF IOWA,
IN RECOGNITION OF
THE ABIDING INFLUENCE FOR GOOD
WHICH HE HAS, THROUGH HIS INSTRUCTION AND
EXAMPLE, EXERTED UPON THE GRADUATES OF HIS DEPARTMENT,
AND THE ESTEEM IN WHICH HE IS HELD BY THEM; AND ALSO AS A TOKEN
OF PERSONAL REGARD FOR HIM AS A MAN, A TEACHER, AND
A FRIEND, THIS BOOK IS MOST RESPECT-
FULLY INSCRIBED BY
THE AUTHOR.

PREFACE.

THE object of the author has been to present in this work the general statutory law of Iowa, consisting of the Code of 1873, as amended and added to by subsequent enactments, together with a concise digest of the decisions of the Supreme Court of the state, construing, explaining or applying such statutory law.

The Code, as presented to the legislature by commissioners previously appointed for its preparation, consisted of a number of separate bills, each bill comprising a title, which, after some amendment, became laws through the usual form of enactment, the engrossed bills, as passed and approved, being preserved, as other acts, in the office of the Secretary of State. At the same session, one of the commissioners was appointed to edit the Code and superintend its publication; to prepare an index, marginal notes, etc.; to arrange and number the divisions and subdivisions; to change the references from one section or subdivision to another, so as to conform to the numbering as printed; "and to examine and correct the proof-sheets, and cause all clerical, typographical and grammatical errors of punctuation to be corrected." (See act printed in appendix.) There is nothing to show what changes the editor thus appointed intended to make in the original acts as passed by the General Assembly. It is apparent that the re-arrangement of the order of some of the parts, the consecutive numbering of the sections, which in the original acts were numbered independently in each chapter, and the uniform substitution of such terms as "district attorney," "county auditor," etc., respectively, for "prosecuting attorney," "clerk of the board of supervisors," etc. (in accordance with the plan of the commissioners, which does not seem to have been fully carried out in their report), and of simpler phrases for such cumbrous ones as, "It shall be the duty of," etc., were made by him; but it is not to be presumed that he felt authorized to make any other than such merely formal alterations of language.

It is, however, generally known to the profession that the printed Code varies from the language of the original in some cases so materially as to affect the entire meaning of some of the sections, and in such a way as to preclude the idea that the change was intentional. To correct such errors, evidently made either in preparing copy for the printer or in proof-read-

ing, was a matter of course, but it seemed quite unsatisfactory to notice only such as were apparent, while other, and more important ones might be overlooked; and therefore a careful comparison of the printed Code with the original thereof, as existing in the office of the Secretary of State, was determined upon and made, for the purpose of this work, and a larger number of omissions and evident errors was brought to light than was at first anticipated. All changes which could be properly considered as introduced by the editor, have been passed over, and only those noted which seem to be such as it is not supposed that, under the authority of the act above referred to, he could have intentionally made. Of the latter, however, there are over one hundred, many of them, as the author believes, of considerable importance, as for example those noted in sections 464, 1415, 1844, 1890, 2666, 2807 and 3320.

It has been held by the Supreme Court, in regard to printed copies of the statutes, published under authority of the state, that "the original act in the Secretary's office, is the ultimate proof of the law, whatever errors there may be in what purports to be copy thereof, and the court will inform itself and take cognizance of the true reading of the statute;" *Clare v. The State*, 5 Iowa, 509; and to the same effect, see *Duncombe v. Prindle*, 12 *id.*, 1, 11. And the same principle has been applied to the Code itself in *Selz v. Belden*, 48 Iowa, 451, 457, and *Weller v. Hawes*, 49 *id.*, 45, 47, where the court refer to the original rolls to show that the word "filed," occurring in Sec. 2961 of the printed volume should be "fixed."

Therefore, while to follow the language of the original in all cases would be to reject the proper editing which the legislature authorized, it has been considered necessary, in case of such alterations or omissions as are evidently the result of mistake or oversight, to adopt the language of the original acts. But in all such cases the change made in the language of the printed Code, and the reason therefor, has been preserved in a note following the section, so that any one referring to the work may judge for himself of the materiality or propriety of such change.

All acts of a permanent, general and public nature, passed by the legislature since the enactment of the Code of 1873, including those of the Eighteenth General Assembly, lately adjourned, are embodied in this work. Where they are amendatory of previously existing provisions, the change made is incorporated directly into the text; where they are additional to the Code, they are inserted under the proper chapter or title, according to the arrangement of subjects therein made. The text is intended to show the law as it will stand on the fourth day of July, 1880, being the date when the acts of the last General Assembly, which have not previously taken effect by publication, come in force; but in each case where there is an amendment or where new matter is inserted, the fact is indicated in a note in smaller type.

The merely formal parts of the acts, such as the title and the enacting clause, are omitted, though where, as in one or two cases, there is no enacting clause in the original act, that fact is noted. Publication clauses are also omitted, but a table is given at the end of the second volume, pre-

ceding the index, showing where each act of a public nature passed since the enactment of the Code, is inserted in this work, and in this table the title of each act and the date of its taking effect, whether by publication or otherwise, is given, so that these matters are made readily accessible in such few cases as they may be of importance, without cumbering the body of the book with them.

The annotations are the result of a careful examination, case by case, of the opinions of the state Supreme Court, including all those rendered prior to the March term, 1880. By the kindness of the Reporter, the author was enabled to examine the proof-sheets of the fiftieth and fifty-first volumes of reports, just issued, before finally arranging his matter under the different sections, so that the references to cases included in these volumes, as also those to cases not yet reported, will be found incorporated in their proper connection. Such of the opinions of the United States Circuit Court for this district, embraced in the volumes of Dillon's Reports, as bear upon the statutes of the state, are included in the notes. It has also been thought proper to refer to, or quote from, the report of the code commissioners wherever it throws any light upon the intention with which new provisions, or changes in old ones, were proposed. In addition, the notes contain a large number of cross-references to other sections and notes, showing in each case the point to which they relate.

The statements of points decided are made from an examination of the opinions themselves, without depending upon head-notes, indexes, digests, or tables of statutes cited. This was believed to be the only sure way to find all the references valuable for the special purpose of the work. The citations are not confined to cases in which the various sections are construed, or specially referred to, but include all which bear upon subjects regulated by statute, and upon questions of practice under the Code.

The aim has been, first, to collect under each section *all* the cases pertinent thereto, and, secondly, to state clearly the very point, or points, considered in each case. The notes are, as far as possible, so arranged as to form a connected, consistent and distinct enunciation of the principles embodied in the decisions, and when the cases are numerous and relate to different subjects they are arranged under appropriate headings.

The state Constitution is fully annotated, and the effort is made, by indexing it in connection with the statutes and making cross-references to it under the various sections relating to subjects to which it also refers, to render it more generally accessible than it has been heretofore.

Among other preliminary matter at the beginning of the first volume, are given tables of corresponding sections, showing where each section of the Code of 1851, the Revision, and the session laws subsequent to the Revision and prior to the Code of 1873, if still retained, or if not, then where the corresponding provision, if any, is to be found in the present Code. The marginal notes to the text have also been enlarged so as to include references to

corresponding sections of the Code of 1851, and much fuller references to the session laws and the Revision. These two features, it is believed, will greatly facilitate the investigation of the history of the various statutory provisions, and be a valuable assistance in the matter of determining what the law was under which prior decisions have been made, and how far they are applicable to the law as it now stands.

At the end of the second volume, will be found a comprehensive index to the text, including Code, subsequent acts, and state Constitution, in which are also given full references to points stated in the notes, so far as they are not covered by the references to the sections under which they are placed. This index has been prepared with great care, in view of the well known importance of such a feature in a work of this kind, and upon a different plan from that heretofore adopted in state editions of the statutes, and it is hoped that by greatly increasing the number of cross-references and by combining in one index the references to statutes and notes, all parts of the work will be rendered readily accessible.

In carrying out the plan thus stated, the author has spared neither time nor labor in the endeavor to make the work thorough, accurate and complete; the measure of his success he leaves to the judgment of his brethren in the profession.

DES MOINES, May, 1880.

TABLES OF CORRESPONDING SECTIONS.

[IN these tables an asterisk (*) indicates that the section or sections following it take the place of, but do not properly correspond to, the ones opposite which they are placed.]

CODE OF 1851.

The following table gives, in the first column, consecutively, the numbers of the sections of the Code of 1851, and in the second, the corresponding sections of the Code of 1873:

CODE OF '51.	CODE OF '73.	CODE OF '51.	CODE OF '73.	CODE OF '51.	CODE OF '73.
1-3	1-3	79	262	219	379
4-6	5-7	80	259	220	381
7, 8	8, 9	81	263	221	389
9	11	82	3668	222	*391
10	10	83	259	223-230	392-399
11	12	84	*277, *1955	231-233	385-387
12	14	85-87	264-266	234	Omitted
13	16	88-92	Omitted	235	3-8
14	15	93	279	236	Omitted
15	16	94	Omitted	237-240	*573-591
16-22	28-34	95	280	241	784
23-25	Omitted	96	589	242	Omitted
26	45	97	Omitted	243	593
27-33	46-52	98-102	"	244	Omitted
34	Omitted	103-140	"	245	603
35, 36	53, 54	141, 142	193, 194	246-256	606-616
37	3755	143	Omitted	257	617, 6-5
38, 39	See Const.	144, 145	196, 197	258-262	619-623
40, 41	59, 60	146, 147	Omitted	263	627
42	3756	148	203	264-266	624-626
43, 44	61, 62	149	Omitted	267-269	628-6-0
45	*121	150	335	270-273	634-638
46	35, 36	151	Omitted	274	Omitted
47	35	152-156	327-331	275-278	639-642
48	63	157, 158	*913	279	Omitted
49	3757	159-161	332-334	280	*641
50-58	66-74	162	Omitted	281, 282	643, 644
59	*132	163-169	*205-207	283, 284	645
60	*121	170-178	337-345	285-294	649-658
61	3758	179	347	295	3827
62-68	75-81	180-182	Omitted	296-300	T. 5, ch. 3
69	*132	183-202	349-368	301-312	659-669
70	Omitted	203-206	369-372	313-315	Omitted
71-77	T. 8, ch. 18	207-210	374-377	316	632
78	258	211-218	Omitted	317	*633

TABLES OF CORRESPONDING SECTIONS.

CODE OF '51.	CODE OF '73.	CODE OF '51.	CODE OF '73.	CODE OF '51.	CODE OF '73.
318	Omitted	472	Omitted	573, 574	*972
319-322	670-673	473	*821	575	Omitted
323, 324	674	474, 475	*824	576	*970
325	677	476, 477	Omitted	577	994
326, 327	678	478	825	578	*982
328, 329	679	479	Omitted	579	Omitted
330	680	480	*833	580	*987
331	675	481, 482	*834	581	Omitted
332	*676	483	*836	582, 583	990, 991
333	682	484	*838	584	Omitted
334	685, 686	485	839	585	932
335-338	687-690	486	*837	586	991
339, 340	692, 693	487	843	587	989
341	692	488	845	588	*934
342-346	694-698	489	854	589-593	Omitted
347	699, 700	490	*829	594	993
348	700	491	851	595-612	Omitted
349, 350	699	492, 493	857, 858	613-620	*111-119
351, 352	703, 704	494	860	621-631	*1038-1057
353, 354	701, 702	495	865	632-634	*559
355	705	496	871	635, 636	*560
356	704, 706	497	866	637	561
357	707	498	872	638-642	*426-429
358	702	499	*875, 877	643-647	*440-446
359, 360	708, 709	500	881	648	Omitted
361	702, 705	501	876	649-672	T. 4, ch. 10
362	714	502	878	673-680	1058-1065
363-365	710-712	503	*887, 895-897	681	10-9
366	Omitted	504	895	682, 683	1066-1067
367	713	505	890	684, 685	1076, 1077
368-394	718-744	506-508	Omitted	686-688	1-71-1073
395	Omitted	509	899	689	1068
396	745	510	906	690, 691	1074, 1075
397-401	746-750	511, 512	907	692-694	1078-1080
4'2	Omitted	513	*914	695-698	1082-1085
403, 404	751, 752	514, 515	920, 921	699	1081
405, 406	754, 755	516	921	700-702	10-6-1088
407	753	517, 518	1001-1002	703	Omitted
408-410	756-758	519, 520	Omitted	704	1089
411-413	766-768	521	923	705-707	Omitted
4'4	766	522	Omitted	708-711	1091-1094
415-417	769-771	523	924	712-717	1011-1016
418, 419	773	524	935	718	1022
420-422	774-776	525-533	925-933	719	1017
423	Omitted	534	*8824	720	1019
424-427	777-780	535, 536	934	721	1018
428	Omitted	537	941	722, 723	1020-1021
429, 430	781, 782	538	940	724	1009
431-435	789	539	942	725	Omitted
436	783	540, 541	943	726	1003
437, 438	Omitted	542	940	727	Omitted
439-441	785-787	543	944	728-730	1006-1008
442, 443	Omitted	544	*8824	731	1022
444	788	545-547	945-947	732	1020-1021
445-453	*1885-1889	548, 549	Omitted	733	Om.*1026
444, 455	796, 797	550	947	734	1010
456-459	801-804	551, 552	9.0	745-747	Omitted
460	812	553, 554	957, 958	748-753	1023-1028
461	805	555	951	754-756	Omitt'd
462	808-810	556	955	757, 758	1029-1030
463, 464	806, 807	557-566	Om. *958	759-769	1269
464-469	812-816	567-569	*969	770-779	Omitted
470	Omitted	570	*975	780-785	1324-1329
471	*821, 8.2	571, 572	Omitted	786	Omitted

TABLES OF CORRESPONDING SECTIONS.

xi

CODE OF '51.	CODE OF '73.	CODE OF '51.	CODE OF '73.	CODE OF '51.	CODE OF '73.
787, 788	1350-1331	985, 986	*2510	1206	1939
789-809	1333-1353	987-1004	Omitted	1207	1935
810	Omitted	1005-1007	*2133	1208	2014
811-817	1354-1360	1008	Omitted	1209	2015
818	Omitted	1009	2129	1210	1927, 1939
819-823	1364-1368	1010	*2130	1211-1216	1941-1943
824	Omitted	1011-1025	T. 12, ch. 2	1217	19-3
825-828	1369-1372	1026-1043	Omitted	1218	1936
829-832	Omitted	1044-1075	T. 12, ch. 12	1219	1958
833-837	1373-1377	1076	*580	1220, 1221	1959
888	*1363, 1365	1077	*674, 675, 678	1222, 1223	1960, 1961
839, 840	1378, 1379	1078	1578	1224, 1225	1964, 1965
841	*1361, 1363	1079, 1080	Omitted	1226	1969
842	1380	1081	1577	1227-1230	3659-3662
843	Omitted	1082	Omitted	1231	Omitted
844	1381	1083	1579	1232	1970
845, 846	Omitted	1084	Omitted	1233-1236	19-6-1979
847	1382	1085	1579	1237-1238	19-8, 1981
848-850	4715-4717	1086	1583	1239, 1240	1982, 1983
851	4720	1087	3760	1241	1985
852	*4721	1088	1583	1242	2772
853	Omitted	1089-1107	Omitted	1243	1986
854	4720	1108	1716	1244	Omitted
855, 856	4721	1109, 1110	Omitted	1245-1248	1988-1991
*57-875	*2272-2279	1111	1719	1249	1992, 1993
876-893	T. 11, ch. 5	1112	*1720	1250-1266	1994-2010
894	*1447	1113	1752	1267-1269	2011-2013
895-912	1489-1506	1114, 1115	1717	1270-1271	2017, 2018
913, 914	1448, 1449	1116	Omitted	1272, 1273	*2312
915-919	Omitted	1117	*1724	1274	2318
920-922	1479-1481	1118	Omitted	1275	2320
923	3809	1119	*1721	1276	*2321
924-928	T. 11, ch. 6	1120	*1752	1277-1283	2322-2328
929	1554	1121	1722	1284-1-87	2334-2337
930, 931	1540	1122, 1123	1739	1288-1290	2329-2331
932	Omitted	1124	*1753	1291-1294	2338-2341
933	1543	1125, 1126	1740, 1741	1295	2343
934	Omitted	1127	1745	1296	2351
935	1543	1128	1743	1297	2353
936	Omitted	1129	1742	1298	2344
937	*2037-48	1130-1135	*1777-1780	1299	2333
938	2043	1136-1140	1745-1749	1300	2342
939	2050	1141	1751	1301	45, ¶ 21
940	2048, 2049	1142	1753	1302	Omitted
941	*2053	1143	1793	1303	*2347
942	*2060	1144	1731	1304, 1305	2345, 2346
943, 944	2075, 2076	1145	Omitted	1306	2496
945, 946	2077, 2078	1146, 1147	1732, 1733	1307, 1308	2348, 2349
947-952	2082-2087	1148	1766	1309, 1310	2364, 2369
953-955	2089-2091	1149	1733	1311-1313	2354-2356
956	2088	1150	*1722	1314, 1315	Omitted
957	2093	1151	Omitted	1316-1319	2362-2365
958	2103	1152-1154	*1777-1780	1320-1324	2357-2361
959-964	2097-2102	1155-1157	Omitted	1325	2367
965	2096	1158	3370	1326, 1327	2406, 2407
966-969	2104-2107	1159-1178	Omitted	1328-1331	2370-2373
970-973	2108-2111	1179-1185	"	1332	2378
974-976	2112-2114	1186-1189	"	1333	2376
977, 978	2115, 2116	1190	"	1334	2379
979, 980	277, 278	1191	1920	1335	2380
981	2130, 2139	1192	Omitted	1336, 1337	2382, 2383
982	2144	1193-1196	1923-1926	1338	Omitted
983	Omitted	1197, 1198	Omitted	1339-1356	2384-2401
984	*2529, ¶ 2	1199-1205	1928-1934	1357, 1358	2386

CODE OF '51.	CODE OF '73.	CODE OF '51.	CODE OF '73.	CODE OF '51.	CODE OF '73.
1359	2408	1546	149	1679, 1680	548, 2549
1360	*2411	1547	137	1681, 1682	*2550
1361	*2408	1548	138	1683	*2551
1362	*2411	1549	135	1684	*3228
1363	Omitted	1550	3206	1685, 16-6	*2572
1364-1366	2413-2415	1551	139	1687	2563
1367	Omitted	1552	140	1688, 1689	*2565, 2566
1368-1386	2416-2434	1553	141	1690, 1691	2553
1387-1389	2435	1554	142	1692	2558
1390-1393	2436-2439	1555	3163	1693	2552
1394	2440	1556	3164	1694	2557
1395	2441	1557	3166	1695-1697	2554-2556
1396-1403	2443-2450	1558	3172	1698	*2561, 2526
1404-1406	3451	1559	T. 3, ch. 4	1699	2527
1407-1409	2452-2454	1560, 1561	143	1700	Omitted
1410, 1411	2455-2457	1562	144	1701	2586
1412	Omitted	1563	Omitted	1702	2589
1413	2458	1564	146, *583	1703	{ *2580, 2576,
1414	2460	1565	*146-149		{ 3225
1415-1418	2465-2468	1566	163	1704	2581
1419, 1420	2459	1567, 1568	*165	1705	2585, 2613
1421	2440	1569-1571	166	1706	2-90
1422, 1423	2469	1572	Omitted	1707	2592
1424-1427	2470-2473	1573-1575	173-175	1708	2591
1428	2482	1576	161	1709-1712	2593-2596
1429, 1430	2494, 2495	1577	176, *194	1713	Omitted
1431	2475	1578-1580	177-179	1714, 1715	2599
1432	2474	1581-1586	167-172	1716	2600
1433	2477	1587	187	1717	2605
1434	2476	1588	Omitted	1718	2601
1435-1437	2487-2489	1589-1591	*180	1719	Omitted
1438-1441	2483-2486	1592, 1593	188, 189	1720	*2602
1442	2478	1594	*277	1721	2603
1443-1446	2461-2464	1595-1597	190-192	1722	Omitted
1447-1452	Omitted	1598-1608	3491-3501	1723	2604
1453-1455	2212-2214	16-9-1611	208	1724	2608
1456-1461	Omitted	1612	210	1725	2618
1462	2215	1613	*208	1726	2610, 2612
1463-1470	2185-2192	1614-1629	211-226	1727	2611
1471	*3787	1630-1632	227-229	1728	Omitted
1472-1479	2193-2200	1633-1637	234-238	1729	2614, 2615
1480	2220	1638	238	1730, 1731	Omitted
1481	2221, 2222	1639-1641	239-241		{ *2603, 2609,
1482	2223	1642	231	1732	{ 2620
1483	2224	1643, 1644	241, 242	1733	2644
1484	*2869, 2873	1645	230	1734	Omitted
1485, 1486	2229, 2230	1646	243	1735	*2648, 272C
1487-1490	2237-2240	1647	*232	1736	2646
1491, 1492	2241, 2242	1648	Omitted	1737	2635
1493, 1494	2243	1649	245	1738	2651
1495	2244	1650	*2815	1739	Omitted
1496	2246	1651	*2824	1740	2659
1497	2248	1652, 1653	2817, 2818	1741	2663
1498, 1499	2249, 2250	1654	2829	1742	*2712
1500-1508	2257-2265	1655	*38-4	1743	Omitted
1509	2251	1656-1658	2903-29^5	1744-1748	*2669-268C
1510	2247	1659-1660	2529, 25-30	1749	2731
1511	2252	1661	Omitted	1750	2648
1512-1514	2266-2268	1662-1670	2531-2539	1751	2631
1515	2256	1671-1674	Omitted	1752	Omitted
1516-1542	2280-2306	1675	"	1753	2719
1543	1-3-135	1676	2543, 2544	1754	*2649
1544	134	1677	Omitted	1755	*2653
1545	Omitted	1678	2545	1756	2691

TABLES OF CORRESPONDING SECTIONS.

xiii

CODE OF '51.	CODE OF '73.	CODE OF '51.	CODE OF '73.	CODE OF '51.	CODE OF '73.
1757	2687	1843-1845	3408-3410	1987-1989	3192-3194
1758	2686	1846-1848	2949-2951	1990-1993	3196-3199
1759	2689	1849-1852	2953-2956	1994-2001	*3215-3244
1760	2735	1853	2959	2012	3246
1761, 1762	2747	1854	2-61	2003	3253
1763	2744	1855	2963	2004	3249
1764, 1767	2748, 2751	1856	2962	2005	3252
1765	2746	1857	2964	2006	Omitted
1769	Omitted	1858	2963	2007	3254
1770	2739	1859, 1860	2967	2008	3261
1771	2654	1861, 1862	2975, 2976	2009	3266
1772	2740	1863	2979	2010	3260
1773	2761	1864, 1865	2980	2011-2013	Omitted
1774, 1775	2771-2772	1866-1873	2981-2988	2014	3268
1776	2778	1874	2969	2015-2017	3270-3272
1777	2775	1875	2971	2018	3253
1778	2799	1876	2994	2019	Omitted
1779	2790	1877, 1878	2997	2020	3247
1780	2792	1879	2998	2021, 2022	3256, 3257
1781	2791	1880	Omitted	2023, 2024	3262, 3263
1782	2793	1881	2999	2025	3273
1783, 1784	2797, 2798	1832	*2971	2026	3276
1785	2805	1883, 1884	3023, 3024	2027	3248
1786, 1787	2808	1885	3026	2028, 2029	3278
1788	2810	1886, 1887	Omitted	2030	3281
1789	*2803, 2813	18-8	3027	2031	3287
1790	2812	1889, 1890	3032, 3033	2032	32-2
1791, 1792	*2784-2789	1891	Omitted	2033	Omitted
1793	2743	1892	3050	2034	3283
1794	2815	1893-1896	3046-3049	2035, 2036	Omitted
1795	2824	1897	Omitted	2037, 2038	3289, 3290
1796	2819	1898, 1899	3072	2 39	3293
1797	Omitted	1900, 1901	3073, 3074	2040, 2041	3290
1798	2861	1902	3077	2042-2044	3298-3300
1799, 1800	Omitted	1903	3045	2045, 2046	3284
1801, 1802	2846, 2847	1904	3044	2047	3285
1803, 1804	2844	1905-1912	3079-3086	2048, 2049	Omitted
1805	*2831	1913	3089	2050, 2051	3286
18 6, 1807	*2835	1914	3 91	2052	3306
1808	2838	1915	3089	2053	3288
1809	Omitted	1916	3055	2054	3305
1810	2838	1917	3053	2055-2058	3301-3304
1811	2933	1918-1923	3092-3097	2059, 2060	3291, 3292
1812	Omitted	1924	3098, 3099	2061	*3292
1813	2914	1925-1932	3101-3108	2062-2064	3294-3296
1814, 1815	2849	1933-1949	3111-3127	2065, 2066	Omitted
1816	.853	19. 0	Omitted	2067	3297
1817	2966	1951, 1952	3128, 3129	2068	Omitted
1818	2728	1953-1956	3135-3138	2069, 2070	3280
1819	2-65	1957	3140	2071-2077	3307-3313
1820	2855	1958	3145	2078	Omitted
1821, 1822	861, *2848	1959	3148	2079-2082	3314-3317
1823	2863	1960-1964	Omitted	2083	3319
1824	2-69	1965-1972	3216-3223	2084, 2085	3321, 3322
1825	Omitted	1973	*3173	2086	3320
1826, 1827	2870, 2871	1974	3178	2087	Omitted
1828-1830	2872	1975, 1976	3179	2088-2091	3323-3326
1831	2873	1977	3184	2092	Omitted
1832	2872	1978	3180	2093	3327
1833	2874	1979-1981	3174-3176	.094, 2093	3329, 3330
1834-1836	2876-2878	1982	Omitted	2096	3318, 3319
1837-1839	2894-2896	1983	3186	2-97	Omitted
1840, 1841	2897	1984, 1985	3190, 3191	2098	3416
1842	Omitted	1986	3195	2099, 2100	3417

CODE OF '51.	CODE OF '73.	CODE OF '51.	CODE OF '73.	CODE OF '51.	CODE OF '73
2101-2113	3418-3430	2381-2387	3629-3634	2538	3799
2114	3834	2388, 2389	3636, 3637	2539	3799
2115, 2116	3431, 3432	2390	Omitted	2540, 2541	3805, 3806
2117-2120	Omitted	2391-2393	3641-3643	2542	3801
2121	3433	2394, 2395	3643, 3644	2543	3804, 3806
2122	3435	2396-2398	3646-3648	2544	3814
2123-2130	3437-3444	2399-2404	3650-3655	2545	*3811, :812
2131-2133	3331	2405, 2406	3657, 3658	2546	3800
2134-2144	3332-3342	2407	3656	2547	*9-6
2145-2150	3368-3372	2408	3645	2548	3808
2151	3345	2409-2414	3663-3668	2549	3836
2152, 2153	3347	2415-2420	3672-3677	2550	3813
2154-2156	3349	2421-2426	3683-3688	2551	3828
2157	3351	2427-2432	3697-3702	2552	3835
2158-2160	3353-3355	2433	3706	2553	*3843
2161	3352	2434, 2435	3708, 3709	2554-2556	Omitted
2162, 2163	3356, 3357	2436-2444	3711-3719	2557-2560	3837- 840
2164	3350	2445-2452	3721-3728	2561-2563	3839-1831
2165	3358	2453	3730	2564	Omitted
2166-2172	3360-3366	2454	3729	2565-2567	3845-3847
2173	3359	2455-2458	3734-3737	2568-2583	3848-3863
2174	3367	2459-2463	3739-3743	2584-2597	3-65-3878
2175	3345	2464	3751	2598-2607	3880-3889
2176-2178	Omitted	2465	3727	2618-2611	3891-3894
2180, 2181	3373, 3374	2466	3744	2612-2621	3902-3911
2182	3376	2467-2473	*3745-3750	2622	Omitted
2183-2188	*3377-3385	2474	3754	2623-2625	3912-3914
2189	3386	2475	3691	2626-2643	3917-3934
2190	Omitted	2476	3696	2644-2666	3936-3958
2191	*3388	2477-2479	3680-3682	2667	Omitted
2192-2195	3394-3397	2480-2483	3692-3695	2668-2677	3959-3968
2196	Omitted	2484	Omitted	2678-2690	3977-3989
2197-2200	3398-3401	2485-2488	2882-2885	2691-2704	3993-4006
2201-2205	3403-3407	2189	2882	2705-2714	4008-4017
2206	3393	2490-2492	Omitted	2715	4021
2207-2209	Omitted	2493-2495	*2916, 2917	2716	*4031
2210-2212	2928-2925	2496	2918	2-17-2-24	4022-4029
2213-2215	3449-3451	2497, 2498	Omitted	2725-2729	4035-4039
2216	Omitted	2499	2920	2730	4043
2217, 2218	3152, 3453	2500	2525	2731-2734	Omitted
2219, 2220	3455, 3456	2501	2526, 2527	2735-2737	4044-4046
2221	3454	2502	*2525	2738-2743	4065-4070
2222, 2223	3457, 3458	2503	2528	2744-2758	4073-4087
2224-2229	3460-3465	2504	2776	2759-2766	409-4096
2230-2233	3469-3472	2505, 2506	246, 247	2767-2772	4097-4102
2234	3466	2507-2510	251-254	2773-2775	4112-4114
2235 2239	3473-3477	2511	248	2776, 2777	Omitted
2240	3459	2512	3669	2778	*4108, 4115
2241 2252	3478-3489	2513	45, ¶23	2779, 2780	*4115
2253 2254	3467, 3468	2514	*50	2781	4117
2255	3490	2515	Omitted	2782-2787	4118-4123
2256 2260	3502-3506	2516	*2520	2788, 2789	4125-4126
2261 2286	3507-3532	2517-2522	Omitted	2790-2792	Omitted
2287 2288	3535	2523	*819	2793-2802	4145-4154
2289 2299	3536-3546	2524	3756	2803	4155
2300	Omitted	2525, 2526	3771	2804-2810	4157-4163
2301 2319	3547-3-65	2527	*3781	2811-2813	4165-4167
2320 2348	3567-3595	2528-2530	Omitted	2814, 2815	4169, 4170
2349 2358	3597-3606	2531, 2532	*3781	2816-2-19	4103-4106
2359	Omitted	2533	Omitted	2821, 2821	Omitted
2360 2361	3607, 3608	2534	3792	2822	4111
2362 2374	3611-3623	2-35	Omitted	2823	4108
2375	Omitted	2536	3783	2824-2826	Omitted
2376-2390	3624-3628	2537	3790	2-27-2823	4186-4188

TABLES OF CORRESPONDING SECTIONS.

xv

CODE OF '51.	CODE OF '73.	CODE OF '51.	CODE OF '73.	CODE OF '51'	CODE OF '73.
2830	4109	2956	Omitted	3142	4758
2831-2836	4191-4196	2957	4359	3143-3146	4795-4798
2837	4197	2958-2960	Omitted	3147-3153	4776-4782
2838	4209	2961	4362	3154	Omitted
2839	*4204	2962	4365	3155	*4767
2840	4200	2963	4367	3156	See Const.
2841	*4204	2964-2971	4390-4397	3157, 3158	4547, 4548
2842	4214	2972-2978	4398-4404	3159-3162	4550-4553
2843	4206	2979	Omitted	3163, 3164	See Const.
2844	4205	2980, 2981	4412, 4413	3165	4554
2845	4202	2982-2986	4405	3166	See Const.
2846	4201	2987-2990	4406-4409	3167	4555
2847	*4204	2991	4420	3168	4561
2848	4206	2992	4424	3169	Omitted
2849	4215	2993-2995	Omitted	3170-3172	4562-4564
2850	4203	2996	4425	3173	*4569
2851	4213	2997-2999	4558-4560	3174, 3175	4566, 4567
2852-2857	4226-4231	3000, 3001	4430, 4431	3176	4565
2858	Omitted	3002-3008	4444-4450	3177-3192	*4571
2859, 2860	4232, 4233	3009-3012	4432-4435	3193-3208	*4571
2861-2866	Omitted	3013	4443	3209-3214	Omitted
2867	4239	3014-3019	4437-4442	3215	4587
2868	4241	3020	4451	3216-3218	4573
2869, 2870	4242	3021-3028	4452-4459	3219-3226	4574-4581
2871, 2872	4243, 4244	3029-3033	4460-4464	3227-3229	4582-4584
2873	Omitted	3034-3038	4474-4478	3230-3231	*4587, 4588
2874	*4245, 4246	3039-3043	4466-4470	3236-3238	4593-4595
2875-2880	4247-4252	3044, 3045	4472, 4473	3239-3242	*4596-4600
2881	*4256, 4257	3046-3049	*4479-4486	3243-3247	4601-4615
2882	4258	3050-3053	4487-4490	3248-3250	4613-4615
2883	4260	3054, 3055	4491, 4492	3251, 3252	4617, 4618
2884	4259-4261	3056	Omitted	3253-3-58	4654-4659
2885	Omitted	3057	*4493	3259	Omitted
2886-2894	4262-4270	3058, 3059	4496, 4497	3260, 3261	4620-4621
2895	4275	3060	Omitted	3262-3265	4623-4626
2896	4271	3061, 3062	4498, 4499	3266	Omitted
2897	4272	3063-3065	4501-4503	3267	4627
2898	Omitted	3066	4507	3268, 3269	4611, 4612
2899	*4273	3067-3069	Omitted	3270, 3271	4668, 4669
2900-2906	4276-4282	3070-3071	4508, 4509	3272	4374-4376
2907-2909	4284-4-86	3072	Omitted	3273	4377
2910	4291	3073	4510	:274-3277	4379-4382
2911, 2912	Omitted	3074	4512	3278	*4712
2913, 2914	4293, 4294	3075-3078	4513-4516	3279	4714
2915	4295	3079-3086	Omitted	3280, 3281	Omitted
2916	*4305	3087	4518	3282	4171
2917	4300	3088-3096	*4520-4532	328-3290	4175-4182
2918	4465	3097-3098	4538	3291-3296	4629-4634
2919	4304	3099-3102	4540-4543	3297, 3-98	4637, 4618
2920-2920	4306-4316	3103-3106	4723-4726	3299-3308	4641-4650
2931, 2932	4327, 4328	3107	*4736-4743	3309	4652
2933, 2934	4330, 4331	3108-3116	4727-4735	3310, 3311	4130, 4131
2935	4324	3117	4744	3312-3321	4135-4144
2936	4332	3118, 3119	4770, 4771	3322-3331	4660-4669
2937, 2938	4333	3120-3127	Omitted	3332-3350	4672-4690
2939-2941	4334-4336	3128	4748	3351	4692
2942	4346	3129	4751	3352, 3353	Omitted
2943	4397	3130, 3131	4772, 4773	3354-3357	4693-4696
2944	Omitted	3132, 3133	Omitted	3358	Omitted
2945-2951	4340-4346	3134, 3135	4774, 4775	3359	4698
2952	4352	3136, 3137	4791, 4792	3360	4701
2953	Omitted	3138	Omitted	3361-3364	*4702
2954	4354	3139	Omitted	3365	4704
2955	4358	3140, 3141	4793, 4794	3366, 3367	4705, 4706

REVISION OF 1860.

The following table gives in the first column, consecutively, the numbers of the sections of the Revision, and in the last column the corresponding sections of the Code of 1873. In the intermediate columns are given the chapters and sections of session laws which amend or repeal the sections of the Revision.

REVISION.	SESSION LAWS.			CODE OF '73.	REVISION.	SESSION LAWS.			CODE OF '73.
	G. A.	Ch.	Sec.			G. A.	Ch.	Sec.	
1-3				1-3	92				83
4, 5				8-9	93				85
6				11	94				84
7				10	95				83
8				14	96				Omitted
9				16	97, 98				87, 88
10, 11				15, 16	99				88
13-15				5-7	100	{ 12	169		*3759
16				13		{ 13	112	2	
18	*14	118		*12	101	10	103		36
19-25				28-34	102-108				Omitted
26-28				Omitted	109	{ *10	22	1	*583
29				45		{ *1	89		
30-32				46-48	110	*10	22	2	*678
33				*49	111				*143
34-36				50-52	112	*10	22	3	*154
37				Omitted	113	*10	22	4	*156
38, 39				53, 54		{ *10	33	5	Omitted
40				Omitted	114	{ *10	22		
41	13	112	1	3755	115	*10	22	6	*156
42, 43				See Const.	116	*10	22	13	*169
44, 45				59, 60	117, 118	*10	22	8	*157
46, 47				759	119	*10	22	10	*159
48, 49				760, 761	120	*10	22	9	*158
50				Omitted	121, 122				Omitted
51-54				762-765	123				*581
55, 56				759	124-127				150-153
57				78	128				678
58	*13	112	2	*3756	129				*3770
59, 60				61, 62	130, 131				153
61				*121	132				Omitted
62				*35, 36	133, 134				94, 95
63				35	135				95, 678, 679
64				63	136				94
65-69				Omitted	137				*783
70	*13	112	2	*3757	138				97
71-79				66-74	139				102
80				*132	140				97
81				*121	141				98
82	{ 12	168		*3758	142				100
83-85	{ *13	112	2		143				99
86	10	9		75-77	144				101, 144
87-89				78	145				Omitted
90				79-81	146				3766
91				*132	147				96
				Omitted	148-153				3764

TABLES OF CORRESPONDING SECTIONS.

xvii

REVISION.	SESSION LAWS.			CODE OF '73.	REVISION.	SESSION LAWS.			CODE OF '73.
	G. A.	Ch.	Sec.			G. A.	Ch.	Sec.	
154, 155				3765	313				304, 305
156-158				102-104	314				*306, 307
159-162				Omitted	315				*832
163				106	316				*3811
164				107, *25		9 69			
165				*678, 679	317	12 105			3791
166				106		13 148	4		
167				T 5, ch. 10	318				308
168, 169				108	319, 320				320
170				*3767	321, 322				321, 322
171, 172				109, 110	323-332				Omitted
173				105-108	333				629
174				Omitted	334				Omitted
175				3768	335				635-640
176-186				Omitted	336-339	10 29			*646
187	14	165		Omitted	340, 341				Omitted
188-194	{ 10	119		T. 3., ch. 13	342				*193
	13	44			343				194
195				258	344				Omitted
196				262	345, 346				196, 197
197	12	0		*259 ¶ 2	347, 348				Omitted
198				263	349				203
199				3668	350				Omitted
200				259	351, 352	9 165			3815, 3816
201				*277, *1955	353-357	9 165			3786
202-204				264-268	358				335
205, 206				Omitted	359				Omitted
207-209				259	360-367				327-334
210				3975	368-371				Omitted
211, 212				Omitted	372, 373				584, 585
213				2095	374-376				205-207
214, 215				125	377				678, 690
216				3976	378				Omitted
217-220				Omitted	379				*783
221				279	380-382	{ Ex. S. 9 19	5		3775
222				Omitted		10 38			337-345
223				280	383-391				347
224				589	392				349-353
225				*3363, 2552	393-397				300, 354
226-230				Omitted	398				355-368
231-239	*9	49		*281-288	399-412				369-372
240-249				Omitted	413-416				374-377
250-260				309-319	417-420				766
261-276	10	99		Omittet	421				Omitted
277-280	9	119		Omitted	422-429				
281-287				Omitted		{ Ex. S. 8 1	4		
288	14	59	3	1446	430	12 118			3781
289	14	59		1447		13 68			
290				*3809	431				3785
291				324	432	10 68			3784
292-301				Omitted	433				*763
302				*279	434, 435				Omitted
303	{ 9	73		*294	436-439	9 137			Omitted
	13	148	1, 2, 7		440				Omitted
304-306				*299	441				379
307	13	143	3	*296	442				381
308	1-	148	5	*297-300	443				389
309				301	444				*391
310				*676	445-452				392-399
311				302	453-455				335-387
312	{ 11	87	2	303	456				Omitted
	13	38			457				.388

REVISION.	SESSION LAWS.			CODE OF '73.	REVISION.	SESSION LAWS.			CODE OF '73.
	G. A.	Ch.	Sec.			G. A.	Ch.	Sec.	
458				Omitted	592				714
459-461				573-575	593, 594				710, 711
462				576, 577	595				712
463-467				578-582	596				Omitted
468				584	597				713
469	10	52		Omitted	598-600				718-720
470-472				587-589	601				721, 722
473				589	602-609				722-729
474				590	610-616				730-736
475				591	617-624				737-744
476				Omitted	625				Omitted
477				592	626				745
478				593	627	10	52		Omitted
479				Omitted	628-632				746-750
480	9	23		603	633				Omitted
481-491	"	"		606-616	634, 635				751, 752
492	"	"		617, *605	636, 637				754, 755
493-496	"	"		619-622	638				753
497				623	639-641				756-758
498	14	121		627	642	12	115		766
499-501				624-626	643, 644				767, 768
502				628	645				766
503	9	23		629	646				769
504				630	647, 648				770, 771
505, 506				634, 635	649, 650				773
507				636, 637	651-653				774-776
508-512				638-642	654				Omitted
513				Omitted	655-658				777-780
514				*641	659				Omitted
515-517				643-645	660				772
518				645	661				774
519-528				649-658	662	9	54		781
529				3827	663	10 13 13	69		782
530-534				*636, 646-648	667-669	148	6		
535-538				659-662	674	147			*783
539-546				662-669	674	148	6		
547				632	665, 666				Omitted
548	9	89		*633	667-669				785-787
549-553				670-674	670				Omitted
554				674	671				788
555, 556				677, 678	672	11	138		789
557, 558				678, 679	673				791
559, 560				679, 680	674, 675				19
561				675	676-678				20-22
562				*676	679-682				22-25
563				682	683, 684				Omitted
564				685, 686	685, 686				26, 27
565-568				687-690	687				Omitted
569, 570				692, 693	688-709	14	92		*185-1889
571				692	710	Ex. S.	824	1	
572-576				694-698		10	124		796
577				699, 700		11	87	1	
578				700	711	{	931		797
579, 580				699			1079		
581, 582				703, 704	712-717				801-806
583, 584				701, 702	718	*14	106	6	*807
585				705	719, 720				812
586				704, 706	721				813
587				707	722	13	181		814
588				702	723-725				815-817
589, 590				708, 709	726	9	173	2	829
591				702, 705	727-729				Γ. 5, ch. 5

TABLES OF CORRESPONDING SECTIONS.

xix

REVISION.	SESSION LAWS.			CODE OF '73.	REVISION.	SESSION LAWS.			CODE OF '73.
	G. A.	Ch.	Sec.			G. A.	Ch.	Sec.	
730	9	173	3	*3810	827	.....	.....	.....	Omitted
731	"	4	4	*821	828	.....	.....	.....	924
732	"	5	5	821	829	.....	.....	.....	935
733	.....	.....	821, 822	830	.....	11	47	1	925
734-738	.....	.....	823-827	831-834	.....	.....	.....	.....	926-929
739	.....	.....	832	835	.....	14	27	.....	930
740	.....	.....	831	836-838	.....	.....	.....	.....	931-933
741	9	172	6	833	839	.....	.....	.....	*.813
742	.....	.....	834	840, 841	.....	.....	.....	.....	934
743	.....	.....	835, 836	842	.....	.....	.....	.....	941
744	.....	.....	919	843	.....	9	141	.....	940
745	.....	.....	837	844	.....	.....	.....	.....	942
746	18	138	2	839	845, 846	.....	.....	.....	943
747	.....	.....	841	847	.....	.....	.....	.....	940
748	.....	.....	843, 844	848	.....	.....	.....	.....	944
749	.....	.....	919	849	.....	.....	.....	.....	*3813
750, 751	.....	.....	845, 846	850-852	.....	.....	.....	.....	945-947
752	11	104	.....	851	853, 854	.....	.....	.....	Omitted
753	.....	.....	852	855	.....	.....	.....	.....	949
754	.....	.....	854	856, 857	.....	.....	.....	.....	950
755	.....	.....	Om. *329	858, 859	.....	.....	.....	.....	957, 958
756, 757	.....	.....	857, 858	860	.....	.....	.....	.....	951
758	.....	.....	860	861	.....	.....	.....	.....	955
759	Ex. S. 8	24	6	865	862-866	.....	.....	.....	Omitted
	{	9	173	18	867	.....	11	47	2
760	{	13	90	867	868-871	.....	.....	.....	"
761	9	173	7	869	872	.....	.....	.....	3824
762, 763	.....	.....	870, 871	873	.....	.....	.....	.....	959, 961, 963
764	Ex. S. 8	24	4, 5	872-874	874	.....	.....	.....	960
765	.....	.....	875	875, 876	.....	.....	.....	.....	*962
766	9	173	9	876	877	.....	.....	.....	3824
767-773	.....	.....	877-883	878	.....	.....	.....	.....	Om. *921
774	9	173	11	884	879	.....	.....	.....	9-6
775, 776	.....	.....	885, 886	880	.....	.....	.....	.....	969
777	10	100	.....	887, 3797	881	.....	.....	.....	977, *591
778	9	173	12	888	882	.....	.....	.....	See T. 5, ch. 1
779	{	9	173	13	*890	883	.....	.....	979
	{	13	90	884	884	.....	.....	.....	973
780	.....	.....	891	885	{	10	76	2	*983
781	14	124	.....	895	{	*12	100	9	.....
782-784	.....	.....	895-897	886, 887	.....	.....	.....	.....	984, 985
785	.....	.....	899	888	{	9	163	5	936
786	.....	.....	903	889	{	12	100	7	.....
787, 788	.....	.....	904, 905	890	.....	.....	.....	.....	968
789, 790	.....	.....	901, 902	891	{	9	163	1	969, *527
791-798	.....	.....	906-913	891	{	*12	100	2	973, 974
799	11	114	.....	914	892, 893	.....	.....	.....	.....
800	11	6	.....	915	.....	.....	.....	.....	.....
801, 802	.....	.....	916, 917	894	{	9	163	2	980
803	.....	.....	Om. *77	894	{	*12	100	3	.....
804, 805	.....	.....	918, 919	895	10	76	2	969	.....
806, 807	.....	.....	908	896	.....	.....	.....	.....	984
808, 809	.....	.....	Omi.ted	897	*12	100	3	987	.....
810, 811	.....	.....	900	898	12	76	.....	975	.....
812-817	.....	.....	Omitt	896	{	9	163	3	*983
818	.....	.....	800	896	{	12	100	4	.....
819, 820	.....	.....	920, 921	900	.....	.....	.....	.....	998
821	.....	.....	921	901-905	.....	.....	.....	.....	989-993
822	.....	.....	1001	906	.....	9	51	.....	999
823	9	112	.....	1002	907	.....	9	96	994
824, 825	.....	.....	Omitt	908	908	.....	.....	.....	1000
826	.....	.....	923	909	.....	.....	.....	.....	996 3809

TABLES OF CORRESPONDING SECTIONS.

REVISION.	SESSION LAWS.			CODE OF '73.	REVISION.	SESSION LAWS.			CODE OF '73.
	G. A.	Ch.	Sec.			G. A.	Ch.	Sec.	
910			976	1093					521, 522
911	9	90	3809	1094					523
912			Omitted	1095					505, 524, 527
913-915			964-966	1096					525, 526
916			953	1097	13	179			*527
917-955			Omitted	1098, 1099					528, 529
986-990	9	77	Omitted	1100	*13	81			*482-485
991, 992			113, 114	1101					530
993			111	1102	{ 10	25	2		506
994			115		12	188			
995			112	1103	14	7			532
996-999			116-119	1104					533
1000, 1001			Omitted	1105					506, 534
	*Ex. S. 8	17		1106-1108					535-537
1002-	*9	75		1109					*471-475
-1015	*Ex. S. 9	35		1110					Omitted
	*10	84		1111-1113					538-540
		11	122	1114					Om. *1653
1016-1018			*559	1115-1121					541-547
1019			*60	1122					489-491
1020	13	77	Omitted	1123	10	25	3		495
1021			561	1124					496
1022-1024			Omitted	1125	13	59			497
1025			*559	1126					498
1026			Omitted	1127					Omitted
1027			372	1128, 1129					499, 500
1028			Omitted	1130	10	25	4		501
1029			5 2	1131					502, 503
1030			Om. *551	1132					504
1031	12	61	2	1133	11	34	1		492
1032	"	3	422	1134, 1135					493, 494
1033, 1034	*12	61	4	1136-1140					Omitted
	"	5	*423	1141-1143					548-550
1035	"	5	424	1144-1149					Omitted
1036			Omitted	1150, 1151					1058, 1059
1037-1039			425-427	1152	13	172	2		1060
1040			Omitted	1153	"	"	3		1061
1041-1043			428-430	1154, 1155					1062, 1063
1044-1045			432-433	1156	13	172	4		1064
1046			65	1157					10 5
1047			454	1158					1069
1048-1054			440-446	1159, 1160					1066, 1067
1055			Omitted	1161	13	172	5		1076
1056-1058			455-457	1162					1077
1059	*14	78	*471-475	1163-1165					1071-1073
1060-1062			458-460	1166					1068
1063	12	154	1	1167, 1168					1074, 1075
1064			464	1169-1171					1078-1080
1065, 1066			476, 477	1172	13	172	6		1082
1067			Omitted	1173-1175					1083-1085
1068-1070	13	14	478-480	1176					1081
1071-1073			482	1177-1179					1086-1088
1074			483	1180					Omitted
1075			486	1181					1089
1076			3720	1182-1184					Omitted
1077-1084			507-514	1185					1070
1085			506	1186					Omitted
1086, 1087			515, 516	1187	13	151			1091
1088	13	81	*482-484	1188	13	172	7		1092
1089			485	1189					1094
1090			517	1190, 1191					1091
1091	10	25	1	1192					Omitted
1092			520						

TABLES OF CORRESPONDING SECTIONS.

XXI

REVISION.	SESSION LAWS.			CODE OF '73.	REVISION.	SESSION LAWS.			CODE OF '73.
	G. A.	Ch.	Sec.			G. A.	Ch.	Sec.	
1193	13	172	8	1095	1340, 1341	.....	.....	.....	1284, 1285
1194	13	172	9	1096	1342-1344	.....	.....	.....	Omitted
1195	10	12	.....	1097	1345, 1346	.....	.....	.....	553, 554
1196	1099	1347	.....	.....	.....	Omitted
1197	13	172	10	1100	1348-1353	.....	.....	.....	1324-1329
1198, 1199	1101, 1102	1354	.....	.....	.....	Omitted
1200-1205	1011-1016	1355, 1356	.....	.....	.....	1330, 1331
1206	1022	1357-1375	.....	.....	.....	1333-1351
1207	1017	1376, 1377	10	40	.....	1352, 1353
1208	1019	1378	.....	.....	.....	Omitted
1209	1018	1379-1385	.....	.....	.....	1354-1360
1210, 1211	1021, 1021	1386	.....	.....	.....	{ Omitted
1212	1039	1386	.....	.....	.....	{ *2590, ¶ 1
1213	Omitted	1387-1391	.....	.....	.....	1364-1365
1214	1003	1392	.....	.....	.....	Omitted
1215	Omitted	1393-1395	.....	.....	.....	1369-1371
1216-1218	1006-1008	1396	.....	.....	.....	{ 1372,
1219	1022	1396	.....	.....	.....	{ *303, ¶ 24
1220	1030, 1021	1397	.....	.....	.....	*309, *319
1221	Om. *1026	1398-1400	.....	.....	.....	Omitted
1222	1010	1401-1405	.....	.....	.....	1373-1377
1223-1235	Omitted	1406	.....	.....	.....	*1263, 1365
1236-1241	1023-1028	1407, 1408	.....	.....	.....	1378, 1379
1242-1244	Omitted	1409	.....	.....	.....	*1361, 1363
1245, 1246	1029, 1030	1410	.....	.....	.....	1380
1247	12	145	1	*1034	1411	.....	.....	.....	Omitted
1248	"	"	2	*1004	1412	.....	.....	.....	1381
1249, 1250	"	"	3, 4	*1005	1413, 1414	.....	.....	.....	Omitted
1251-1263	Omitted	1415	.....	.....	.....	1382
1264-1266	118-1190	1416-1418	.....	.....	.....	4715-4717
1267	11	119	.....	*1192, 1193	1419	10	75	3	4720
1268	1195	1420	.....	.....	.....	*4721
1269	1198	1421	.....	.....	.....	Omitted
1270	{ 1190, 1191,	1422	.....	.....	.....	4720
1271-1273	{ 1200	1423, 1424	.....	.....	.....	4721
1274	1201-1203	1425, 1426	13	109	5	*1389
1275, 1276	1188	1427	*13	109	3	*1384
1277	1204	1428	13	109	8	*1388
1278-1288	1205	1429	*13	109	9	*1389
1289-1313	1269	1430	13	109	11	*1391
1314	Omitted	1431	..	..	13	1393
1315	1241	1432	..	..	14	1394
1316	Omitted	1433	..	..	12	1392
1317	14	19	.....	{ 1244, 1252	1434, 1435	.....	.....	.....	Omitted
1318	{ 1254, 1255	1436	*13	109	28	*1403
1319	1245	1437	..	..	29	*1404
1320	1251	1438	..	..	25	1422
1321	*1247	1439, 1440	.....	.....	.....	Omitted
1322, 1323	1262	1441	13	109	38	1444
1324-1327	1263	1442	{	11	132	*1425
1328	1264-1267	1443, 1444	13	109	42	.....
1329	Omitted	1445	13	109	39	*1423
1330	1268	1446, 1447	.....	.....	.....	Omitted
1331	Om. *2611	1448	13	109	48	3825
1332	1288	1449	.....	.....	.....	2272
1333	1275	1450	.....	.....	.....	Omitted
1334	1277	1451-1455	.....	.....	.....	2274-2278
1335-1337	1276	1456	.....	.....	.....	{ *2266-2271,
1338	Omitted	1457	.....	.....	.....	2274
1339	10	20	1068	1458, 1459	.....	.....	.....	Omitted
				1283					1412

TABLES OF CORRESPONDING SECTIONS.

REVISION.	SESSION LAWS.			CODE OF '73.	REVISION.	SESSION LAWS.			CODE OF '73.
	G. A.	Ch.	Sec.			G. A.	Ch.	Sec.	
1460				1413		9	94	2	
1461-1463				*4624-4626	1575	12	128		1526
1464				1414		14	24	1	
1465-1468				Omitted		9	94	3, 4, 7	
1469				*1386	1576	12	128		1529-1532
1470				Omitted		14	24	2	
1471, 1472	*13	109	1, 2	*1383	1577				1559
1473	13	109	3	*1384	1578				1551, 3829
1474	{ 11	100			1579-1581				1552-1554
	{ 13	109	6	1386	1582				Omitted
1475				Omitted	1583				1555
1476	11	100		Omitted	1584, 1585				Omitted
1477	13	109	7	1387	1586				1548
1478				Omitted	1587				1541
1479				*1-01	1588-1635	Rep. 13	25		Omitted
1480	{ 12	179	16	*1399-1400	16 6, 16-7				1570, 1571
	{ *13	109	19, 20		1638, 1639				1573, 1574
1481				*3825	1640				
1482	{ 12	179	16	*1404, *1408	1641-1696				Omitted
	{ *13	109	29		1697, 1698				1109, 1110
1483	12	179	16	Omitted	1699				Omitted
1484				Omitted	1700				1104
1485	*13	109	40	*1424	1701				1103
1486	13	109	44	1427	1702, 1703				1106, 1107
1487	13	109	45	1428	1704	{ 10	109	1	1112
1488	*13	109	46	*1432		{ 12	136	1	
1489				Omitted	1705				1105
1490	13	109	4	1407	1706				Omitted
1491				Omitted	1707	10	109	2, 3	1114, 1115
1492	*13	109	5	*1385	1708	10	109	4	1116
1493-1495				Omitted	1709-1713				Omitted
1496				*1386	1714				1604
1497-1499				Omitted	1715		11	47	1604
1500-1503				216-2219	1716		11	47	1605
1504				1517	1717				1606-1611
1505				*1447	1718				1606
1506-1510				1512-1516	1719				1608
1511-1513	9	102		*1464-1478	1720				Omitted
1514				1518	1721				1607
1515	9	102		*1464-1468	1722-1727				Omitted
1516-1519				1519-1522	1728				1621
1520				3822	1729				1606
1521	9	102		*1464-1478	1730				1619
1522-1524	10	65		1447	1731				1606
1525				Omitted	1732, 1733				Omitted
1526-1543				1489-1506	1734	10	121		1606-1612
1544				*1507	1735-1738	10	121		Omitted
1545				1507	1739	11	47		1606-1614
1546, 1547				Omitted	1740				Omitted
1548, 1549				1448, 1449	1741	10	109	5	1107
1550-1554				Omitted	1742	10	109	6	1108
1555-1557				147%-1481	1743-1745				Omitted
1558				3809		9	39		
1559-1561				1523-1525	1746-1758	{ Rep 12	138		1122-1183
1562				1540		12	173		
1563, 1564				1542, 1543	1759-1762	9	39		See T. 9., ch. 5.
1565	9	94	9	1544	1760	R. p.	11	106	" "
1566-1569				1546-1549	1763		13	18	1560
1570				3807	1764				1561
1571				1550	1765-1768				1563-1566
1572-1574				Omitted	1769-1774				Omitted

TABLES OF CORRESPONDING SECTIONS.

xxiii

REVISION.	SESSION LAWS.			CODE OF '73.	REVISION.	SESSION LAWS.			CODE OF '73.
	G. A.	Ch.	Sec.			G. A.	Ch.	Sec.	
1775	9	82	1-12	*2037-2048	1979	.....	.....	.....	1855
1776	9	82	.....	2043	1980	.....	.....	.....	1859
1777	2050	1981-1984	.....	.....	.....	.....	1861-1864
1778	2049, 2048	1985, 1986	.....	.....	.....	.....	1866, 1867
1779	9	82	14-17	*2053, *2057	1987-1989	.....	.....	.....	Omitted
1780	9	82	20	*2060	1990-1993	.....	.....	.....	1876-1879
1781-1784	2,49	1994	.....	.....	.....	.....	*1910, 1831
1785, 1786	2075, 2076	1995-1999	.....	.....	.....	.....	Omitted
1787, 1788	2077	2000-2021	1052	1	1577-1584	1	1713
1789-1792	2078-2081	2022	9 172	1	1713	3	1727
1793	2082-2097	2023	{ 9 172	12	.....	.....	1727
1794-1799	2089-2091	2024	{ 11 143	3	.....	.....	1793
1800-1802	2088	2025	.....	.....	.....	.....	Omitted
1803	2093	2026	{ 91 72	5	.....	.....	1716
1805	2103	2026	{ 11 33	.....	.....	.....	.....
1806-1811	2097-2102	2027, 2028	.....	.....	.....	.....	1717
1812	2096	2029	.....	.....	.....	.....	Omitted
1813	2092	2030, 2031	.....	.....	.....	.....	1718, 1719
1814	9	116	.....	2094	2032	.....	.....	.....	1752
1815-1818	2104-2107	2033	.....	.....	.....	.....	1717, 1718
1819-1822	2108-2111	2034	.....	.....	.....	.....	1778
1823-1825	2112-2114	2035, 2036	.....	.....	.....	.....	1721, 1722
1826-1828	2115-2117	2037	.....	.....	.....	.....	{ 1723-1734
1829	2119	2038-2041	.....	.....	.....	.....	{ 1777-1778
1830	2118	2042	.....	.....	.....	.....	1738-1741
1831-1839	2120-2128	2043	.....	.....	.....	.....	1743
1840, 1841	Omitted	2044	.....	.....	.....	.....	1742
1842	2123	2045	.....	.....	.....	.....	1777
1843, 1844	277, 278	2046-2050	.....	.....	.....	.....	Omitted
1845, 1846	2129, 2130	2051	.....	.....	.....	.....	1745-1749
1847	13	140	1	2131	2052	.....	.....	.....	1751
1848-1851	2134-2136	2053	.....	.....	.....	.....	1754, 1755
1851	9	111	.....	2137	2054, 2055	.....	.....	.....	1753
1852	2138-2181	2056	.....	.....	.....	.....	1756, 1757
1853-1856	2139-2142	2057	.....	.....	.....	.....	Omitted
1857-1864	*2510	2058	.....	.....	.....	.....	1779
1865	13	140	2, 3	2529, ¶ 2	2059	.....	.....	.....	Omitted
1866	2144	2060, 2061	.....	.....	.....	.....	1779
1867-1869	2145	2062	.....	.....	.....	.....	1781, 1782
1870	*18	140	1	*2133	2063	.....	.....	.....	1758-1760
1871	2146	2064	.....	.....	.....	.....	1789
1872, 1873	Omitted	2065	.....	.....	.....	.....	Omitted
1874	9	128	.....	2147	2066, 2067	.....	.....	.....	1785
1875-1897	2148-2170	2068	.....	.....	.....	.....	1766-1769
1898-1905	13	178	.....	2177-2182	2069-2073	.....	.....	.....	1770-1774
1906-1909	2061-2072	2074	.....	.....	.....	.....	1776
1910	Omitted	2075, 2076	.....	.....	.....	.....	1720, 1721
1911	2073-3935	2077	.....	.....	.....	.....	1761
1912	2074	2078	.....	.....	.....	.....	784
1913	2093	2079	.....	.....	.....	.....	1752
1914-1925	2019-2030	2080	.....	.....	.....	.....	1791
1926-1939	*1585-1608	2081	.....	.....	.....	.....	1786
1940-1958	Omitted	2-82-2084	.....	.....	.....	.....	Omitted
1959	1900	2085	.....	.....	.....	.....	1792
1960, 1961	*14	109	7, 8	*1906, 1907	2086, 2087	.....	.....	.....	Omitted
1962-1966	1837-1841	2088	.....	.....	.....	.....	1778
1967	66, ¶ 12	2089-2091	.....	.....	.....	.....	Omitted
1968	*1783, 1884	2092-2094	Rep. 9 172	.....	.....	.....	Omitted
1969-1971	1844-1846	2095-2096	9 172	79, 80	1787, 1788	.....	Omitted
1972-1975	1851-1854	2097-2099	9 172	.....	.....	.....	1800-1802
1976-1978	1856-1858	.....	.....	.....	.....	.....	.....

TABLES OF CORRESPONDING SECTIONS.

REVISION.	SESSION LAWS.			CODE OF '73.	REVISION.	SESSION LAWS.			CODE OF '73.
	G. A.	Ch.	Sec.			G. A.	Ch.	Sec.	
2100	9	172	....	1802	2218	13	98	....	2015
2101	9	172	....	1806	2219	....	....	....	Omitted
2102, 2103	9	172	....	Omitted	2220-2225	....	....	....	1941-1946
2104	9	172	....	1809	2226	....	....	....	1955
2105	9	172	....	1800, 1805	2227	....	....	....	1958
2106	9	172	....	1802	2228, 2229	....	....	....	1959
2107	10	52	....	Omitted	2230, 2231	....	....	....	1960, 1961
2108	9	31	....	Omitted	2232, 2233	....	....	....	1964, 1965
2109-2117	Omitted	2234	....	....	....	1969
2118	Rep. 9	172	....	Omitted	2235-2238	....	....	....	3659-3662
2119	1764	2239	....	....	....	Omitted
2120-2122	*1717	2240	....	....	....	1970
2123-2132	Omitted	2241	....	....	....	1947
2133-2140	1829-1836	2242, 2243	....	....	....	Omitted
2141	*1664	2244	{ 11	46	....	*1957
2142	Omitted	2244	{ 14	32	....	1956
2143	Omitted	2245	....	....	....	*1966
2144	9	161	....	*1664	2246	....	....	....	1956
2145-2146	1666, 1667	2247	....	....	....	Omitted
2147	1680	2248-2250	....	....	....	*1966-1968
2148	1672	2251, 2252	....	....	....	1962, 1963
2149	*1677	2253, 2254	....	....	....	Omitted
2150, 2151	1673, 1674	2255	....	....	....	1936
2152	*1668	2256, 2257	....	....	....	Omitted
2153	*1675, 1676	2258	....	14	60	*1971
2154	1670	2259-2262	....	....	....	1972-1975
2155	*1685	2263	....	....	....	Omitted
2156	1689	2264-2267	....	....	....	1976-1979
2157	1685	2268, 2269	....	....	....	1982, 1983
2158	1685, 1686	2270	....	....	....	1985
2159, 2160	1687, 1688	2271	....	....	....	2772
2161	*1694	2272	....	....	....	1986
2162, 2163	1690, 1691	2273-2276	....	....	....	Omitted
2164	Rep. 9	152	....	Omitted	2277-2279	....	....	....	1988-1990
2165-2168	Omitted	2280	9	173	9	1991
2169, 2170	121, 122	2281	....	....	....	1992, 1993
2171	Omitted	2282-2298	....	....	....	1994-2010
2172, 2173	123	2299-2301	....	....	....	2011-2013
2174-2176	124	2302, 2303	....	....	....	2017, 2018
2177	105	2304, 2305	12	86	3	*2312
2178	105, 108	2306	....	....	....	....	2318
2179	Omitted	2307	....	....	....	....	2320
2180, 2181	126, 127	2308	....	13	158	2	*2321
2182	Omitted	2309-2315	....	....	....	....	2322-2328
2183	128	2316-2319	....	....	....	....	2334-2337
2184	3976	2320-2322	....	....	....	....	2329-2331
2185	Omitted	2323	{ 13	158	3	....	2338
2186-2188	556-558	2323	{ 14	71	....	....	2339
2189-2192	Omitted	2324	....	....	....	....	2340
2193, 2194	1487, 1488	2325	13	158	4	....	2341
2195	1487	2326	13	158	5	....	2343
2196	Omitted	2327	....	....	....	....	2351
2197, 2198	4	2328	....	....	....	....	2352
2199	1920	2329	13	158	6	....	2353
2200	*2202	2330	....	....	....	....	2344
2201-2204	1923-1926	2331	....	....	....	....	2333
2205, 2206	Omitted	2332	....	....	....	....	2342
2207-2213	1928-1934	2333	....	....	....	....	*45, ¶ 21
2214	1939	2334	13	158	7	....	Omitted
2215	1935	2335	13	158	8	....	2347
2216	014	2336, 2337	....	....	....	....	2345, 2346
2217	1927, 1938	2338	....	....	....	....	*2496

TABLES OF CORRESPONDING SECTIONS.

XXV

REVISION.	SESSION LAWS.			CODE OF '73.	REVISION.	SESSION LAWS.			CODE OF '73.
	G. A.	Ch.	Sec.			G. A.	Ch.	Sec.	
2339	13	158	9	2348	2474-2476	.....	.....	.....	2479-2481
2340	.....	.....	.....	2349	2477	9	151	1	2440
2341, 2342	.....	.....	.....	2368, 2369	2478	9	151	2	2451
2343-2345	.....	.....	.....	2354-2356	2479	9	151	3	2440
2346, 2347	.....	.....	.....	Omitted	2480	.....	.....	.....	*2436
2348	13	158	10	2362	2481-2487	.....	.....	.....	*2460-2464
2349	13	158	11	2363	2488-2493	.....	.....	.....	*1908-1909
2350	.....	.....	.....	2364	2494	.....	.....	.....	Omitted
2351	13	158	12	2365	2495-2497	.....	.....	.....	2455-2457
2352	13	158	13	2357	2498	Rep. 13	7	.....	Omitted
2353-2356	.....	.....	.....	2358-2361	2499-2504	.....	.....	.....	Omitted
2357	.....	.....	.....	2367	2501, 2506	13	126	.....	2212, 2213
2358, 2359	.....	.....	.....	2406-2407	2507	.....	.....	.....	2214
2360	13	158	14	2370	2508-2513	.....	.....	.....	Omitted
2361-2363	.....	.....	.....	2371-2373	2514	.....	.....	.....	2215
2364	.....	.....	.....	2378	2515-2522	.....	.....	.....	2185-2192
2365	.....	.....	.....	2376	2523	.....	.....	.....	*3787
2366, 2367	.....	.....	.....	2379, 2380	2524-2528	.....	.....	.....	2193-2197
2368, 2369	.....	.....	.....	2382, 2383	2529	12	191	.....	2198
2370	.....	.....	.....	Omitted	2530, 2531	.....	.....	.....	2199, 2200
2371-2375	.....	.....	.....	2384-2388	2532	13	127	.....	2220
2376	13	158	15	2389	2533	.....	.....	.....	*2221, 2222
2377-2385	.....	.....	.....	2390-2398	2534-2535	.....	.....	.....	2223-2224
2386	13	158	16	2399	2536	.....	.....	.....	*2869
2387	13	158	17	2400	2537	.....	.....	.....	2229
2388	.....	.....	.....	2401	2538	.....	.....	.....	Omitted
2389	13	158	18	2366	2539-2542	.....	.....	.....	2237-2240
2390	.....	.....	.....	2366	2543, 2544	.....	.....	.....	2241, 2242
2391	13	158	19	2408	2545, 2546	.....	.....	.....	2243
2392	13	158	23	*2411	2547	.....	.....	.....	2244
2393	13	158	20	*2408	2548	.....	.....	.....	2246
2394	Rep. 13	158	23	*2411	2549-2551	.....	.....	.....	2248-2250
2395	13	158	21	Omitted	2552-2560	.....	.....	.....	2257-2265
2396-2398	.....	.....	.....	2413-2415	2561	.....	.....	.....	2251
2399	13	158	22	Omitted	2562	.....	.....	.....	2247
2400-2402	.....	.....	.....	2416-2418	2563	.....	.....	.....	2252
2403	9	22	.....	2419	2564	11	125	.....	2266
2404-2418	.....	.....	.....	2420-2434	2565, 2566	.....	.....	.....	2267, 2268
2419-2421	.....	.....	.....	2435	2567	.....	.....	.....	2256
2422-2425	.....	.....	.....	2436-2439	2568, 2569	.....	.....	.....	2254, 2255
2426	.....	.....	.....	2441	2570-2572	.....	.....	.....	Omitted
2427-2434	.....	.....	.....	2443-2450	2573-2599	.....	.....	.....	2280-2306
2435-2437	.....	.....	.....	2452-2454	2600-2604	.....	.....	.....	2307-2311
2438	.....	.....	.....	Omitted	2605-2608	.....	.....	.....	2504-2507
2439	.....	.....	.....	2458	2609	.....	.....	.....	2505
2440	.....	.....	.....	2460	2610, 2611	.....	.....	.....	2507, 2508
2441-2444	.....	.....	.....	2465-2468	2612-2615	.....	.....	.....	2513-2516
2445, 2446	.....	.....	.....	2459	2616, 2617	.....	.....	.....	2516, 2517
2447, 2448	.....	.....	.....	2469	2618	.....	.....	.....	Omitted
2449-2452	.....	.....	.....	2470-2473	2619, 2620	.....	.....	.....	2519, 2520
2453	.....	.....	.....	2482	2621	.....	.....	.....	2522
2454, 2455	.....	.....	.....	2494, 2495	2622	.....	.....	.....	2528
2456	.....	.....	.....	2475	2623, 2624	.....	.....	.....	133, 134
2457	.....	.....	.....	2474	2625	.....	.....	.....	137, 3788
2458	.....	.....	.....	2477	2626	*13	122	9	*138
2459	.....	.....	.....	2476	2627	10	23	4	*139
2460-2462	.....	.....	.....	2487-2489	2628	.....	923	5	140
2463-2466	.....	.....	.....	2483-2486	2629, 2630	.....	.....	.....	141, 142
2467	.....	.....	.....	2478	2631-2634	.....	.....	.....	3163-3166
2468-2471	.....	.....	.....	2461-2464	2635	.....	.....	.....	3172
2472	.....	.....	.....	2319	2636, 2637	.....	.....	.....	143
2473	.....	.....	.....	Omitted	2638	.....	.....	.....	144

REVISION.	SESSION LAWS.			CODE OF '73.	REVISION.	SESSION LAWS.			CODE OF '73.
	G. A.	Ch.	Sec.			G. A.	Ch.	Sec.	
2639				Omitted	2743-2745				2531-2533
2640			133, 134		2746	13	167	10	2534
2641			136		2747-2752				2535-2540
2642	12	14		135	2753-2756				Omitted
2643				135	2757-2765				2543-2551
2644				Omitted	2766				Om. *2633
2645			*3769		2767-2770				2572-2575
2646	1	118		*583	2771	18	167	11	*2562
2647, 2648				146	2772				2562
2649			147, 8771		2773	Rep. 13	167	35	Omitted
2650, 2651			148, 149		2774				2563
2652			*3203		2775	Rep. 13	167	35	
2653			163		2776		13	167	12
2654, 2655			*165		2777-2783				2565-2571
2656-2658			166		2784				2559
2659			Omitted		2785				2553
2660-2662			173-175		2786				2558
2663			161		2787				2552
2664-2667			176-179		2788				2557
2668-2672			167-171		2789, 2790				2554, 2555
2673			173		2791				Omitted
2674			187		2792				2556
2675-2678			Omitted		2793, 2794				2560, 2561
2679-2681			*180		2795				2576
2682, 2683			188, 189		2796-2798				2579-2581
2684			277		2799	{	9	169	8
2685-2687			190-192			12	172	2	2582
2688-2698			3491-3501			{	14	95	
2699			208		2800	14	64		2586
2700	13	21	208		2801				2585
2701					2802				2589
2702			210		2803	13	167	13	2590
2703			*208		2804				2591
2704-2707			211-214		2805	13	167	14	2592
2708	13	167	2	215	2806-2809				2593-2596
2709-2719				216-226	2810				2594
2720-2722				227-229	2811				2599
2723, 2724				234, 235	2812				2599, *285 ^r
2725			95		2813-2817				2600-2604
2726			13167	3	2818				Omitted
2727			133		2819-2823				2605-2609
2728	{	13167	4	238	2824	13	167	13	2610
	{	133			2825	14	95	4	2611
2729	{	Ex.S.8	6	1	2826				2611
	{	13167	5	239	2827-2829				2613-2615
2730	{	95			2830				2617
	{	133		240	2831, 2832				2618
	{	1316	6		2833	13	142		2619
2731		95		241	2834	9	174	2	2620
2732	{	13167	7	231	2835-2842				2621-2628
	{	133			2843	13	167	16	2629
2733	{	95		241	2844-2848				2630-2634
	{	13167	8		2849				2635
2734				242	2850, 2851				2636
2735				243	2852	9	174	1	Omitted
2736				243	2853-2855				Omitted
2737				*242	2856	13	167	17	Omitted
2738				244	2857				2637
2739		95		245	2858				2638
2740				2529	2859				2638
2741	13	167	9	2530	2860				Om.*180, ¶ 3
2742	Rep. 13	167	35	Omitted	2861				2707

TABLES OF CORRESPONDING SECTIONS.

xxvii

REVISION.	SESSION LAWS.			CODE OF '73.	REVISION.	SESSION LAWS.			CODE OF '73.
	G. A.	Ch.	Sec.			G. A.	Ch.	Sec.	
2862, 2863				Omitted	2957				2703
2864-2866				2639	2958-2960				2726, 2728
2867				2640	2961				2648
2868				Omitted	2962				Omitted
2869, 2870				2641, 2642	2963, 2964				2642
2871	9	75		2643	2965				Omitted
2872				2644	2966				2729
2873, 2874				2645	2967	§ 9 13	28 167	19	2730
2875				2646	2968-2970				2731, 2733
2876-2879				2648-2651	2971				Omitted
2880				2655	2972-2974				2686-2688
2881				Omitted	2975				2647
2882-2885				2657-2660	2976				2653
2886				2659	2977-2979				689-2691
2887, 2888				2661, 2662	2980				2734
2889				2659	2981				2680
2890				2662	2982				2735
2891				2659	2983				2692
2892				2663	2984				2736
2893				2656	2985-2992				2693-2700
2894				2664	2993				2737
2895-2897				2665-2667	2994-2995				2738
2898, 2899				2667, 2668	2996, 2997				2739
2900				2652	2998				2740
2901				2701	2999				2741, 2742
2902, 2903				2705, 2706	3000-3003				*2742
2904				2669	3004				Omitted
2905, 2906				2670, 2671	3005				2747
2907	13	167	18	2672	3006				Omitted
2908, 2909				2673	3007	13	167	20	2744
2910-2911				2675-2676	3008, 3009				2748, 2749
2912				2675	3010, 3011				2750
2913				Om. *3689-96	3012, 3013				2751
2914, 2915				2678, 2679	3014-3020				2752-2758
2916				2677	3021				Omitted
2917				2712	3022, 3024				2759, 2760
2918				2648, 2713	3024, 3025				2746
2919				Omitted	3026-3035				2761-2770
2920				2648	3036	9	174	3	2771
2921-2923				2714-2716	3037-3040				2772
29 4				Om. *2712	3041				2777
2925				2717	3042-3044				2773-2775
2926, 2927				2708, 2709	3045-3050				2778-2783
2928-2932				2651-2685	3051				2 84
29 3-2936				Omitted	3052				Omitted
2937				2710	3053-3055				2785-2787
2938, 2939				Omitted	3056				Omitted
2940				2711	3057, 3058				2788
2941				Omitted	3059				2789
2942				2718	3060				2788
2943				Omitted	3061-3072				2790-2801
2944				2704	3073-3075				803-3805
2945				Omitted	3076				2802
2946				2719	3077-3081				2806-2810
2947				Omitted	3082				3228
2948-2950				2720-2722	3083-3085				2811-2813
2951				Omitted	3086				2654
2952				2723	3087				2814
2953				Omitted	3088				*2743
2954				2724	3089-3100				2815-2826
2955				2702	3101				*2834
2956				2725					

REVISION.	SESSION LAWS.			CODE OF '78.	REVISION.	SESSION LAWS.			CODE OF '78.
	G. A.	Ch.	Sec.			G. A.	Ch.	Sec.	
3102-3111				2827-2836	3264				346
3112				2837	3265, 3266				3029, 3030
3113				2839	3267				3044
3114-3115				2838	3268	9	174	10	3045
3116				3155	3269-3271				3050-3052
3117-3120				2840-2843	3272	13	167	26	3046
3121, 3122				2849, 2850	3273, 3274				3047, 3048
3123				2853	3275	{ 13 43 { 14 87			3049
3124-3126				2851-2853	3276	Rep. 12 11			Omitted
3127-3131				2844-2848	3277				3055, 3056
3132, 3133				2854, 2855	Omitted				3057-3059
3134					3278-3280				Omitted
3135-3139				2856-2860	3281-3285				3060
3140-3142				2864-2866	3286				3053
3143-3145				2861-2863	3287				*3053
3146, 3147				2867, 2868	3288				3054
3148-3154				2869-2875	3289-3291				Omitted
3155				Omitted	3292				3061
3156-3159	Rep. 9	150		*2876	3293				3063-3066
3160				2877	3294-3297				3064
3161, 3162				2879, 2880	3298				3067-3071
3163				2878	3299-3303				3072
3164				2881	3304	11	91		3072
3165-3171				2886-2892		{ 13 167 { 14 42			3072, 3075
3172, 3173				2949, 2950	3305	13 23	27		3076
3174	13	161	1	2951	3306, 3307				3078-3091
3175, 3176				2953, 2954	3308	13	167	23	3092
3177	13	161	2	2955					Omitted
3178-3183				2956-2961	3309-3322				3101
3184				2963	3323	13	167	29	3102
3185				2962	3324	13	150	1	3103-3129
3186-3188				2664-2666	3325	13	150	2	3104
3189	13	167	21	2968	3326-3330				3095-3099
3190				2973	3331				Omitted
3191, 3192				2994	3332	13	167	30	3135-3144
3193				2995	3333-3359				3136
3194				2967	3360, 3361				Omitted
3195-3200				2975-2980	3362	{ 10 51 { 14 115			3137
3201				2980, 277		10	51	1	3145-3152
3202-3214				2981-2993	3363				3152, 3153
3215-3218				2969-2972	3364-3374				Omitted
3219-3221				2996-2998	3375-3384				3155-3157
3222	13	167	22	2999	3385				3158-3166
3223				*2971	3386-3393				3167-3177
3224				3010	3394, 3395				3184-3193
3225	13	167	23	3000	3396				Omitted
3226				3001	3397				3194-3196
3227	13	167	24	3002	3398-3400				3197-3207
3228				Om, *2959	3401				3208-3216
3229				Omitted	3402				Omitted
3230, 3231				3003, 3004	3403-3407				3217-3221
3232	13	167	25	3011	3408-3415				3222-3226
3233-3242				3012-3021	3416-3418				3227-3231
3243				3022, 197	3419-3426				3232-3236
3244, 3245				3023, 3024	3427				3237-3241
3246-3248				3025-3027	3428				3242-3246
3249-3252				3031-3034	3429-3433				3247-3251
3253				3035, 3240	3434				Omitted
3254, 3255				3036, 3037	3435-3437				3252-3256
3256				Omitted	3438				3257-3261
3257-3262				3038-3043	3439				3262-3266
3263				3028	3440				3267-3271

TABLES OF CORRESPONDING SECTIONS.

xxix

REVISION.	SESSION LAWS.			CODE OF '73.	REVISION.	SESSION LAWS.			CODE OF '73.
	G. A.	Ch.	Sec.			G. A.	Ch.	Sec.	
3441				Omitted	3578				3255
3442-3444				2927-2929	3579				3260
3445				2930, 3168	3580-3583				Omitted
3446				2931	3584	1:	167	31	3268
3447				2932	3585-3588				3269-3272
3448				2927	3589				3253
3449				2933	3590				Omitted
3450				*180, ¶ 3	3591				3247
3451-3464				2934-2947	3592-3595				3246-3259
3465				Omitted	3596-3599				3262-3265
3466				2948	3600				3257
3467	Rep. 9	174	4	*2525	3601				3273
3468-3480	Rep. 9	174	4	Omitted	3602	13	167	32	3274
3481				*3025	363	13	167	33	*3275
3482-3486				3130-3134	3604				3276
3487-3494				3216-3223	3605				3248
3495-3497				Omitted	3606, 3607				3278
3498				3167	3608				3281
3499				3154	3609				3287
3500-3506				3156-3162	3610				3282
3507				3173	3611				Omitted
3508				3171	3612				3283
3509				3178	3613, 3614				Omitted
3510				3177	3615, 3616				3289, 3290
3511				3179	3617				3293
3512				3184	3618, 3619				3290
3513-3516				3180-3183	3620-3622				3298-3300
3517-3519				3174-3176	3623, 3624				3284
3520-3523				3211-3214	3625				3285
3524				3185	3626, 3627				Omitted
3525, 3526				3209, 3210	3628, 3629				3286
3527, 3528				3186	3630				3306
3529-3534				3188-3593	3631				3288
3535				3203	3632				3305
3536-3543				3195-3201	3633-3636				3301-3304
3544				3203	3637, 3638				3291, 3292
3545				3168	3639				*3292
3546, 3547				3207, 3208	3640-3642				3294-3296
3548-3551				3204-3206	3643, 3644				Omitted
3552				3215	3645				3297
3553				3225	3646				Omitted
3554				3229	3647, 3648				3280
3555	14	123		3230	3649-3660				3307-3319
3556-3558				3231-3233	3661, 3662				3321, 3322
3559				3237	3663				3320
3560				3234	3664				Omitted
3561				3228	3665-3668				3323-3326
3562				3239	3669				Omitted
3563				3241	3670				3327
3564				3243	3671				3327
3565, 3566				Omitted	3672				3330
3567				3239	3673	11	116		3318, 3319
3568				3241	3674				Omitted
3569				3246	3675, 3676				3416, 3417
3570				3250	3677	9	174	5	3417
3571				3253	3678-3690				3418-3430
3572				3249	3691				3834
3573				3252	3692				3431
3574				Omitted	3693				3432
3575				3254	3694-3697				Omitted
3576				3261	3698-3700				3445-3447
3577				3266	3701-3712				3433-3444

TABLES OF CORRESPONDING SECTIONS.

REVISION.	SESSION LAWS.			CODE OF '73.	REVISION.	SESSION LAWS.			CODE OF '73.
	G. A.	Ch.	Sec.			G. A.	Ch.	Sec.	
3713-3715				3331	3875	14	127		3533
3716-726				3332-3342	3876				3534
3727-731				3363-3372	3877, 3878				3535
3732				3345	3879-3889				3536-3546
3733, 3734				3347	3890	9	174	6	3547
3735				3348	3891-390 ^o				3548-3565
3736-3738				3349	3909-3937				3567-3595
3739				3351	3938-3951				357-3610
3740-3742				3353-3355	3952	9	174	7	3611
3741				3354	3953-3964				3612-3623
3742				3355	3965				3623 ^{1/2}
3743				3352	3966-3968				3624-3626
3744-3745				3356, 3357	3969	13	188		3627
3746				3350	3970, 3971				3628, 3629
3747				3359	3972				3629
3748-3754				3360-3366	3973	9	174	8	3630
3755				3359	3974-3977				3631-3634
3756				3367	3978-3980				3636-3638
3757				3345	3981				4576
3758-3760				Omitted	3982				*3639
3761				{ 3373, 3374, 3377	3983, 3984				3641, 3642
3762				3378	3985, 3986				3643
3763, 3764				3373, 3374	3987				3644
3765				3376	3988-3997				3646-3655
3766				3379	3998, 3999				3657, 3658
3767				3375	4000				3656
3768				3381	4001-4004				3659-3662
3769-3773				3382-3386	4006-4111				3663-3668
3774				Omitted	4012-4030				3671-3689
3775				3388	4031-4034	Rep. 9	174	9	Omitted
3776-3779				3394-3397	4035, 4036				3690, 3691
3780				Omitted	4037				3696
3781				3393	4038-4041				3692-3695
3782	14	112		3399	4042-4064				3697-3719
3783, 3784				3400, 3401	4065				3721
3785-3789				3403-3407	4066	13	167	34	3722
3790				3393	4067-4072				3723-3728
3791, 3792				Omitted	4073-4076				3730-3733
3793				3402	4077				3729
3794				Omitted	4078-4087				3734-3743
3795-3797				2923-2925	4088, 4089				3751
3798				3386	4090, 4091				3752, 3753
3799				Omitted	4092				3727
3800				3388	4093-4099				3744-3750
3801-3803				3449-3451	4100				3754
3804				Omitted	4101-4103				4558-4560
3805, 3806				3452, 3453	4104				Omitted
3807, 3808				3455, 3456	4105-4108				2882-2885
3809				3454	4109				2882
3810, 3811				3457, 3458	4110				2525
3812-3817				3460-3465	4111				2526, 2527
3818-3821				3469-3472	4112				2776
3822				3466	4113, 4114				246, 247
3823-3827				3473-3477	4115-4118				251-254
3828				3459	4119				248
3829-3840				3478-3489	4120				3669
3841, 3842				3467, 3468	4121				45
3843				3490	4122				Omitted
3844-3850				3502-3708	4123, 4124				45
3851	12	149		3509	4125				250
3852-3874				3510-3532	4126				249

TABLES OF CORRESPONDING SECTIONS.

xxxii

REVISION.	SESSION LAWS.			CODE OF '73.	REVISION.	SESSION LAWS.			CODE OF '73.
	G. A.	Ch.	Sec.			G. A.	Ch.	Sec.	
4127, 4128				2523, 2524	4248-4252				3912-3916
4129				2994	4253-4270				3917-3934
4130				3448	4271-4293				3936-3958
4131				Omitted	4294				Omitted
4132				3819	4295				3959
4133				3756	4296	12	150		3960
4134, 4135				3771	4297-4305				3961-3969
4136, 4137	Ex. S. 81	1		Omitted	4306				3969
4138, 4139				Omitted	4307				Omitted
4140, 4141	Ex. S. 81	1		Omitted	4308-4310				3970-3972
4142				Omitted	4311-4313				Omitted
4143				3792	4314				3973
4144				Omitted	4315				4278
	{ 9	52			4316, 4317				Omitted
4145	{ 10	46	1	3788	4318-4323				3977-3982
	{ 13	152			4324	11	28		3983
4146				3790	4325-4332				3984-3991
4147	{ 10	46	2	*3789	4333-4346				3993-4006
	{ 13	152			4347-4356				4008-4017
4148				3799	4357				4021
4149	14	134		3805	4358	*13	171	1, 2	*4031
4150	14	134		3806	4359				4022
4151				3801	4360	9	146		4023
	{ Ex. S. 81	5			4361-4366				4024-4029
4152	{ 12	141		3804-3806	4367-4369				4030
	{ 14	134			4370				Omitted
4153				3814	4371-4373				4035-4037
4154	{ 9	15	1-4	3811, 3812	4374	10	110		4038
	{ 10	92			4375, 4376				4039, 4040
4155	11	109		3800	4377-4380				4043-4046
4156				3818		{ 9	115	2	
4157				3836	4381	{ 12	113	1	4048
4158				3813		{ 14	117		
4159				3835	4382	12	113	2	*4049, *4051
4161				*3843	4383	{ 9	115	3	4050
4162, 4163				Omitted		{ 12	113	4	
4164-4167				837-840	4384	12	113	5	*4050
4169-4170				3829-3831	4385	12	113	6	*4051
4171, 4172				Omitted	4386-4391				4065-4070
4173				2520	4392, 4393				4072
4174				Omitted	4394-4408				4073-4087
4175				3226	4409-4422				4089-4102
4176, 4177				3244, 3245	4423-4427				Omitted
4178				3277	4428-4431				4103-4106
4179				3509, 3319	4432-4438				Omitted
4180				3346	4439-4441				4108-4110
4181				33-0	4442-4444				4112-4114
4182				3474	4445, 4446				Omitted
4183				2510	4447				4108, 4115
4184, 4185				2511, 2512	4448-4454				4115
4186, 4187				Omitted	4455-4463				4116-4126
4188-4190				3845-3863	4464				4121
4207-4220				3865-3878	5405-4484				4125-4144
4221				3864	4485	Rep. 1	109		Omitted
4222-4230				3880-3888	4486-4488				Omitted
4231	9	53		3889	4489-4498				4145-2154
4232-4234				3891-3893	4499				Omitted
4235		13	185	3894	4500				4155
4236				3895	4501				Omitted
4237-4245				3902-3910	4502				4156
4246				3911	4503, 4504				Omitted
4247				Omitted	4505-4512				4157-4164

TABLES OF CORRESPONDING SECTIONS.

REVISION.	SESSION LAWS.			CODE OF '73.	REVISION.	SESSION LAWS.			CODE OF '73.
	G. A.	Ch.	Sec.			G. A.	Ch.	Sec.	
4513-4515				4165-4167	4830-4834				4474-4478
4516, 4517				4169, 4170	4835-4843				4465-4473
4518	12	39		4171	4844-4851				4479-4486
4519-4529				4172-4182	4852-4855				4487-4490
4530				4111	4856-4859				4491-4494
4531-4533				Omitted	4860, 4861				4495, 4496
4534-4537				4186-4189	4862, 4863				4496, 4497
4538	13	137		4190	4864				Omitted
4539-4544				4191-4196	4865-4874				4498-4507
4545-4573				4197-4225	4875-4879				Omitted
4574				*4108, *4185	4880, 4881				4508, 4519
4575-4580				4226-4231	4882, 4883				Omitted
4581				Omitted	4884, 4885				4510, 4511
4582, 4583				4232, 4233	4-86				4512
4584-4588				*4234-4238	4-87-4896				Omitted
4589, 4590				Omitted	4-97-4903				4513-4519
4591-4596				4239-4244	4904-4906				4520-4523
4597				Omitted	4910				Omitted
4598-4605				4245-4252	4911				4527
4606				Omitted	4912, 4913				Omitted
4607				4253	4914-4916				4528-4530
4608-4611				4255-4258	4917				4526
4612				4260	4918-4931				4531-4544
4613				4261-4259	4932				Omitted
4614				Omitted	4933				4545
4615-4623				4262-4270	4934-4936				See Const.
4624				4273	4937-4944				4546-4553
4625				4271	4945-4947				See Const.
4626-4644				4272-4290	4948, 4949				4554, 4555
4645-4648				4-91-4294	4950-4959				4561-4570
4649-4671				4295-4317	4960				4571
4672-4679				4318-4325	4961				4572
4680-4689				4327-4336	4962-4965				See Const.
4690				4336	4966-4982				4587
4691-4699				4337-4344	4967-4975				4573-4588
4700, 4701				4345, 4346	4993	11	12		4599
4702-4706				4347-4351	4994-5013				4600-4619
4707-4713				4352-4358	5014				Omitted
4714-4722				4359-4367	5015-5065				4620-4670
4723-4726				Omitted	5066		933		4671
4727-4747				4368-4388	5067-5087				4672-4692
4748				Omitted	5088-5089				Omitted
4749				*4419	5090-5093				4693-4696
4750				4419	5094				Omitted
4751-4759				4389-4397	5095-5104				4697-4706
4760-4766				4398-4404	5105-5109				4707-4711
4767-4791				4505	5110-5115				Omitted
4772-4778				1406-4412	5116				4712
4779	10	10	1	4413	5117-5119				See Const.
4780	10	10	2	*4414	5120	14	96		1713
4781-4784				4415-4418	5121				4714
4785-4790				4420-4425	5122-5125				4723-4726
4791, 4792				4430, 4431	5126				*4737, 4738
4793-4799				4444-4450	5127-5135				4727-4735
4800-4803				4432-4435	5136				4744
4804				4443	5137				4770
4805				4426, 4556	5138				4771
4806-4808				4427-4429	5139-5141				Omitted
4809-4815				4436-4442	5142				4748
4816				4451	5143				*4751
4817-4824				4452-4459	5144				4772
4825-4829				4460-4464	5145				4773

TABLES OF CORRESPONDING SECTIONS.

xxxiii

REVISION.	SESSION LAWS.			CODE OF '73.	REVISION.	SESSION LAWS.			CODE OF '73.
	G. A.	Ch.	Sec.			G. A.	Ch.	Sec.	
5146, 5147				Omitted	5170, 5171				4768-4769
5148, 5149				4774, 4775	5172				Omitted
5150				4791	5173-5175				4745-4747
5151				4792	5176	Ex. S. 85			*5174
5152				Omitted	5177-5185				4749-4757
5153, 5154				4793, 4794	5186-5189				4799-4802
5155	9	48		*4758	5190	12	69		*4783
5156-5159				4795-4798	5191	12	69		*4783
5160-5162				4776-4778	5192	{	9	37	*4783
5163	14	51		4779		12	69		
5164-5166				4780-4782	5193	12	69		*4783
5167				Omitted	5194-5196				4803-4805
5168				4767	5197, 5198				Omitted
5169				4754					

SESSION LAWS.

This table gives in the first two columns, the chapters and sections of the public and general acts of the General Assembly, subsequent to the Revision and prior to the Code of 1873, and, in the last column, the corresponding sections of the Code ; while, in the intermediate columns, are given references to acts which amend, repeal, or modify.

EXTRA SESSION OF EIGHTH GENERAL ASSEMBLY.

CH.	SEC.	SESSION LAWS.			CODE OF '73.	CH.	SEC.	SESSION LAWS.			CODE OF '73.
		G. A.	Ch.	Sec.				G. A.	Ch.	Sec.	
1					T. 23	24	1				235
2					323		2				796
5					T. 26, ch. 2		3				832
6					2:19		4				874
12					800		5				872
17		Ex. S. 9	12		*1038-1057		6				865
		10	84	28							

NINTH GENERAL ASSEMBLY.

CH.	SEC.	SESSION LAWS.			CODE OF '73.	CH.	SEC.	SESSION LAWS.			CODE OF '73.
		G. A.	Ch.	Sec.				G. A.	Ch.	Sec.	
4	1	14	54	1			6				629
	2				4052		7				605
	3	14	54	2		25	1, 2				683
	4	"	3		4054		3				3797
	5	"	4		4053		4, 5				683, 694
5					*240, 241, 766		6				Omitted
15	2	10	92		3811	26					197-201
	3, 4				3811, 3812	27	1				2245
17	1				*855		2, 3				Omitted
	2				Omitted	28					27:0
	3	11	27	1	"	29		14	58		3:74
	4				"	30					Omitted
	5				*856	31					797
	6				Omitted			9	156		
	7				"	32		11	110		797
22	1				2375		1				1910
	2, 3				Omitted		2				Omitted
	4				2377		3-5				1916-1918
	5				2419		6				1914
23	1	14	86		603		7				1919
	2				604		33				4671
	3				606		1, 2		12	108	*3896
23	4				*607		3-5				Omitted
	5				610		1, 2				4055
						35					

TABLES OF CORRESPONDING SECTIONS.

XXXV

CH.	SEC.	SESSION LAWS.			CODE OF '78.	CH.	SEC.	SESSION LAWS.			CODE OF '78.
		G. A.	Ch.	Sec.				G. A.	Ch.	Sec.	
3					*3870	4	5				1535, 1536
4					Omitted	94	6, 7				Omitted
36					641		8				1534
37					*4783		9				1544, 1545
39					T. 9, ch. 5	96	1				994
46					Omitted		2-4				996-998
47	1, 2				1556, 1557		5				969
	3				1558, 1532		6				973
48	1-9				4758-4766		7, 8				*975
	10				*4783	97					462
49	1				281	102	1-8				1464-1470
	2				2-8, 282		9				1470, 1823
	3				282		10				*1469-1823
	4				285		11				1469
	5				*284		12, 13				1471, 1472
	6, 7				286		14				3823
	8				287		15				Omitted
	9				283		16-2				1473-1478
51					999		22, 23				3821
52					3788	110					853
53					3890	111					137
54					781	112	1				1602
56					*89		2, 3				Om. *1026
61					Omitted	115	2				+048
66	1				*3842		3				4050
	2				3841	116					2, 94
70		13	159		*1217, 1227	117					Omitted
71	1				2490	119					-mitted
	2				2492	120		12	74	1	3897
	3				2491	121					3911
	4				*3787	123					*1969
73	1				380	128					2147
	2				*294, 295	135					3992
75	1				243	137					3787
76	1-8	{ Ex. S. Rep. 9	20		Omitted	141					940
	9		" "	3	1485	146					4023
10-12		" "			Omitted		1		14	68	1860
78	1-5				563-567		2				1868
	6				Omitted		3-7				1870-1874
80	1				412		8				Omitted
	2				413, 414		9				1875
81					Omitted		10		14	34	*1881-1884
82	1-12						11		13	29	*1850
	13, 14				2037-2048		12				1851
	15				2052, 2053		13				1880, 2542
	16				3763		148	14			1865
	17-21				2054		150				2, 76
	22				2057-2061		151		1		2440
	23				2055		2				2451
	24				3802		3				2440
	25-27				2056		152		Rep. 10	54	*1685-1696
84					2062-2064		154	1	10	93	3343
					{ 2172-2176, 4088		2				3344
87					Omitted		155		{ Rep. 9 Ex. S.	2	Omitted
88					792, 793		156	1	11	10	1911
89					633		2, 3				4789, 4790
90					3809		158	1-5			1, 92-1296
93					2610		159	1-6			1279-1282
94	1				Omitted		163		12	100	*969, 970
	2				1531			1			*980, 987
	3				1533		2				

TABLES OF CORRESPONDING SECTIONS.

CH.	SEC.	SESSION LAWS.			CODE OF '73.	CH.	SEC.	SESSION LAWS.			CODE OF '73.
		G. A.	Ch.	Sec.				G. A.	Ch.	Sec.	
	3, 4				*981, *982		64	11	143	7	1766
	5	10	76	1	986		65-68				1767-1770
165					3817		69	14	133	2	1771
166					Omitted		70-72				1772-1774
167					3794, 3795		73	{ 10	102	4	{ 1776
169	1				1303		{ 11	143	8		
	2	13	139		*1304		74				1761
	3-5				1288		75				*784
	6	{ 12	79		1289		76				*673
		{ 14	128		1307		77				1786
	7	13	121		2582		78				Omitted
	8	14	95		1309		79-81				1787-1789
	9				82, 83						1791-1792
	10				Omitted		84	{ 11	143	9	1800
172		11	143	12	1713		{ 12	28	1		
	1				Omitted		85	{ 11	143	10	1801
	2				1714		{ 12	28	2		
	3				1715		86	{ 12	28	2	1802
	4	14	133	1	1716		172	{ 11	143	11	1803
	5				1717		87	{ 12	28	2	
	6	{ 14	84		1717		88				1805
		{ 11	143	2	1717		89	{ 10	57		
	7	11	143	1	1717			{ 13	8	4	1806
	8	{ 14	84		1718			{ 13	8	5	1808
	9, 10				1719, 1720		90				1809
	11				1752		91				Omitted
	12	11	143	3	1727		92				66
	13				1793		93				Omitted
172	14, 15				1794, 1795		173	1			
	16				*1717		2	{ Ex.S.9	8		
	17	{ 11	143	4	*1778			{ 10	26		390
		{ 12	183		1721, 1722		3				
	18, 19	11	143	13	1723, 1724		4, 5				3810
	20, 21				1726		6				821
	22				1730-1734		7				833
	23-27				1736		8				869
	28	11	143	15	1796		9				66
	29	11	143	16	1778		10				876, 1991
	30	11	143	5			11				574
	31	{ 10	102	1			12				*884
		{ 11	143	14	1777		13				888
		{ 14	21				14				890
	32				1737		15				892
	33				Omitted		16				*1317-1323
	34	10	102	2	1738		17				859
	35-39				1789-1743		18				866
	40				*1777		174	1			Omitted
	41-47				1745-1751		2				2620
	48, 49				1753, 1754		3				2771
	50	11	143	6	1755		4				2525, *2527
	51, 52				1756, 1757		5				3417
	53-57				1779-1783		6				3547
		{ 10	102	3			7				3611
	58	{ 12	29		1784		8				3630
		{ 12	122				10				3045
	59-61				1758-1760			{ Ex.S.9	35		
	62				589		175	{ 10	49		*1038-1057
	63				{ *576, *675,			{ 10	84		
					{ *783						

EXTRA SESSION OF NINTH GENERAL ASSEMBLY.

CH.	SEC.	SESSION LAWS.			CODE OF '73.	CH.	SEC.	SESSION LAWS.			CODE OF '73.
		G. A.	Ch.	Sec.				G. A.	Ch.	Sec.	
8					390	25	1	11	69		434
12					Omitted		2, 3				435
19	1				Orn. *1386		4-7				436-439
	2				*3774	26	1				1604
	3				3769	27	1				Omitted
	4				*3756-3760		2				*680, 682
	5	10	38		*3775	34					555
20	1, 2				Omitted	35		10	84	28	*1038-1057
	3				1485	38		Rep. 11	48	1	Omitted

TENTH GENERAL ASSEMBLY.

CH.	SEC.	SESSION LAWS.			CODE OF '73.	CH.	SEC.	SESSION LAWS.			CODE OF '73.
		G. A.	Ch.	Sec.				G. A.	Ch.	Sec.	
9					78		2				1287
10					4413, 4414		3, 4				1273
12					1097	46		13	152		3788, 3789
14					2952, 3227	49					Omitted
17					*761	51		14	115		Omitted
18					4041	52	2				580
20					1283		3				678
22	1	11	89		*583		4				1578
	2				678		5				1577
	3, 4				154, 155		6				Omitted
	5	10	38		Omitted		7				1581
	6				156		8				1579
	7				Omitted		9-11				1582-1584
	8, 9				157, 158		12				3760
	10	11	20		159	53					4047
	11				Omitted	54	1				*1675, 1693
	12				122		2, 3				*1669, 1686
	13				160		4				*1671
23	1				*582		5				*1676, 1692
	3				582		6				*1677, 1694
	4, 5				139, 140		7				*1678, 1695
25	1, 2				518		8				*1679, 1696
	3				495	56	1				2065
	4				501		2				2066
26					390	56	3				2063
29					646-648	57		14	133		1307
30					131	59	1				*1585
31					1188		2				*1589
33		10	22	5	Omitted		3				*1587-1588
34	1-3				71-717		4				*1588
	4				On. *687		5				*1602
36	1, 2				Omitted		6				*1586
	3				1668		7				*1598
37					1229-1235		9				*1593-1595
38					3775, 3776		10				*1589
40					1352		11				*1596
43	1				855		12				*1592
	2	11	27	1	Omitted		13				*1597
	3				Omitted		15				*1588-1590
	4				856		16				*1594
44	1		11	102	1286		17				*1599

CH.	SEC.	SESSION LAWS.			CODE OF '73.	CH.	SEC.	SESSION LAWS.			CODE OF '73.
		G. A.	Ch.	Sec.				G. A.	Ch.	Sec.	
.....	18	.....	.....	.....	*1601	.....	2	.....	.....	.....	1738
60	.....	.....	.....	303, ¶ 19	.....	3	.....	.....	.....	.....	1784
65	.....	.....	.....	1447	.....	4	.....	.....	.....	.....	1774
66	.....	.....	.....	82	.....	103	1	.....	.....	.....	86
68	.....	.....	.....	3784	.....	109	1	.....	.....	.....	Om. *1112
69	.....	.....	.....	782	.....	2-4	.....	.....	.....	.....	1114-1116
72	.....	.....	.....	Omitted	.....	5, 6	.....	.....	.....	.....	1107-1108
75	.....	.....	12	100	T. 25, ch. 56	110	.....	.....	.....	.....	4038
76	.....	.....	12	100	.....	114	1	.....	.....	.....	129
.....	1	.....	.....	986	.....	2	.....	12	93	.....	130
2	.....	.....	.....	*983	.....	115	1	.....	.....	.....	3832
79	.....	.....	.....	797	.....	2	.....	11	103	.....	873, 3833
84	1	.....	.....	1038	.....	118	1	.....	.....	.....	*1662
.....	2, 3	.....	.....	1041, 1042	.....	2	.....	14	34	5	*1883
4-7	.....	.....	.....	1044-1047	.....	3	.....	13	29	1	1847
8-11	.....	.....	.....	1049-1052	.....	4	.....	.....	.....	.....	1869
12	.....	.....	.....	1057	.....	5-7	.....	14	34	.....	*1881-1884
13	.....	.....	11	48	1053	119	.....	.....	.....	.....	*268
14	.....	.....	11	48	1054	120	.....	.....	.....	.....	2171
15-21	.....	.....	.....	1055	.....	121	.....	11	47	.....	{ T. 12, ch. 3 { 1604-1622
22-24	.....	.....	.....	1056	.....	122	.....	.....	.....	.....	840
25	.....	.....	.....	1057	.....	124	.....	.....	.....	.....	470
27	.....	.....	.....	Omitted	.....	127	.....	.....	.....	.....	589
85	1-3	.....	.....	105-57	.....	129	3, 4	.....	.....	.....	678
.....	4	.....	.....	*3752	.....	5	.....	.....	.....	.....	3793
86	1	.....	.....	1298	.....	6	.....	11	75	.....	336
.....	2	.....	14	39	1299	.....	8	.....	13	166	3796
86	3	.....	.....	1301	.....	9	.....	.....	.....	.....	1031, 1032
.....	4	.....	.....	1300	.....	10	.....	.....	.....	.....	1036
88	.....	.....	.....	3782	.....	130	1-4	.....	.....	.....	1033, 1034
91	.....	.....	11	66	1228	.....	5	.....	.....	.....	1037
92	.....	.....	.....	3811	.....	6, 7	.....	.....	.....	.....	Omitted
93	.....	.....	.....	3343	.....	8, 9	.....	.....	.....	.....	1035
95	.....	.....	.....	Omitted	.....	10	.....	.....	.....	.....	3005-3009
98	18	.....	.....	585	.....	11	.....	.....	.....	.....	1842-1843
100	.....	.....	.....	89	.....	133	.....	.....	.....	.....	.....
102	1	.....	.....	Omitted	.....	134	.....	.....	.....	.....	.....

ELEVENTH GENERAL ASSEMBLY.

CH.	SEC.	SESSION LAWS.			CODE OF '73.	CH.	SEC.	SESSION LAWS.			CODE OF '73.
		G. A.	Ch.	Sec.				G. A.	Ch.	Sec.	
3	.....	.....	.....	718	34	.....	.....	.....	.....	.....	492
5	.....	.....	.....	277	43	1	.....	.....	.....	.....	Omitted
6	.....	.....	.....	915	.....	2, 3	.....	.....	.....	.....	*1669
10	1, 2	.....	.....	4056	.....	4	.....	.....	.....	.....	1671
.....	3	.....	.....	*3370	.....	5-8	.....	.....	.....	.....	1676-1679
.....	4	.....	.....	Omitted	.....	46	.....	14	32	.....	1957
.....	5	.....	.....	4057	.....	47	.....	.....	.....	.....	T. 12, ch. 3
12	.....	.....	.....	4599	48	.....	.....	.....	.....	.....	1054
20	.....	.....	.....	Omitted	49	.....	.....	.....	.....	.....	3169, 3170
24	.....	.....	.....	{ Omitted	53	.....	.....	.....	.....	.....	3635
27	.....	.....	.....	{ 2202-2211	57	1	.....	.....	.....	.....	*3774
28	.....	.....	.....	Omitted	61	.....	2	.....	12	160	*3769
30	.....	.....	.....	983	.....	1-4	.....	.....	.....	.....	1949-1951
33	.....	.....	.....	89	.....	5	.....	.....	.....	.....	Omitted
.....	.....	.....	.....	1716	.....	.....	.....	.....	.....	.....	.....

TABLES OF CORRESPONDING SECTIONS.

xxxix

CH.	SEC.	SESSION LAWS.			CODE OF '73.	CH.	SEC.	SESSION LAWS.			CODE OF '73.
		G. A.	Ch.	Sec.				G. A.	Ch.	Sec.	
.....	6				1952	118		14	11		.....
.....	7				Omitted	.....	1				307
.....	8				1954	.....	2				Omitted
.....	9				Omitted	.....	3				307
.....	10				*825	.....	4				44
.....	11				*828	119	1				1192
66					1228	.....	2				1193-1197
67					3770	120					2493
69					434	122					1040
75					3793	124					893
81					64	125					2253-2266
87	1				796	127		Rep. 13	147		Omitted
.....	2				303, ¶ 24	128	1				1111
88					583, 783	.....	2				1113
89					583	135			12	45	4064
91					3072	136	1				1685
92	2	14	75		*1623	.....	2-7				Omitted
.....	3				1624	137	1, 2				794
.....	4, 5				1626, 1627	.....	3-5				795
.....	7				1629	138					790
.....	8				Om. *1630	139	1, 2				2352
.....	9				1631	.....	3-6				2402-2405
.....	10, 11				Om. *1630	.....	7-11				2496-2500
.....	12				1632	.....	12				Omitted
.....	13-20				1635-1642	.....	13, 14				2501, 2502
100					Om. *1386	.....	15				Omitted
102					1286	.....	16				2503
103					873	142					447-453
104					851	143	1, 2				1717
106					Omitted	.....	3				1727
107	1				415, 525	.....	4, 5				*1778
.....	2, 3				415, 416	.....	6				1755
.....	4				Omitted	.....	7				1766
.....	5-7				417	.....	8				*1776
.....	8-11				418-420	.....	9, 10	Rep. 12	28	3	*1815
108	1				Omitted	.....	11				1804
109					3800	.....	12				1772
110	1				1912	143	13				1721, 1722
.....	2				1915	.....	14				1777
.....	3				1913	.....	15				1736
113					1308, 2184	.....	16				1797
116					Om. *319	.....				

TWELFTH GENERAL ASSEMBLY.

CH.	SEC.	SESSION LAWS.			CODE OF '73.	CH.	SEC.	SESSION LAWS.			CODE OF '73.
		G. A.	Ch.	Sec.				G. A.	Ch.	Sec.	
3					90	89					4183, 4184
10					91, 92	45					4064
14					135	47					925
27	1				*133, *134	48		Rep. 14	50		Omitted
.....	2				*136	52					Omitted
.....	3	12	65		135	53	1				3770
.....	4				*135	.....	2				Omitted
.....	5				3769, 3771	56	1				1908
28	1	13	8	1	1800	.....	2				2442
.....	2				1802-1805	.....	3				1909
29					1784	.....	4				Omitted

TABLES OF CORRESPONDING SECTIONS.

CH.	SEC.	SESSION LAWS.			CODE OF '73.	CH.	SEC.	SESSION LAWS.			CODE OF '73.
		G. A.	Ch.	Sec.				G. A.	Ch.	Sec.	
59	1				1643	108					3896
	2		14	131	1644	110					954
	3-21				1645-1663	111					478-481
60					259	113	1		14	117	4048
61	1				Omitted	113	2				4051-4048
	2-6				See Const.	113	3-6				4048-4051
					421-425	115					766
65					135	117	1, 2				1242, 1243
66	1-5				1630		3				1250, *1244
	6, 7				1633, 1634		4				Omitted
69					4783-4788	122					1785
74	1, 2				3897, 3898	123					*163, 164
	4				3899	128	1, 2				1529, 1530
	5.				Omitted	134	1				3783
75	1.				842		2				195, 766
	2.				847	136	1				1112
	3				919		2				1108
76					975	137	1, 2				400, 401
78	1				1881-1884		3				783
	2				1850		4, 5				402, 403
79					1278		6				404, 859
86		14	22				7-13				405-411
		{ 13	153			138	1-5				1222-1126
	1				*586		6-8				1130-1132
	2				783		9-11				1127-1129
	3				2312		12-22				1133-1143
	4, 5				*162	138	23	14	106	2	1144
	6				Omitted		24-31				1145-1152
	7				2592		32, 33	Rep. 14	106	7	*1158, *1154
	8				Omitted		34				1155
	9				184, 3670		35	14	106	1	1156
	10				193, 202		36, 37				1157, 1158
	11				184		38	Rep. 14	106	7	807
	12				*2313-2316		39				1159
	13				*3774			{ 13	108		
	14				*187		40	{ 14	107		1160
	15				3787	140					867
	16, 22	Rep. 13	41		Omitted	141					3818
	23				Omitted	143					4062
	24	Rep. 13	41		*165	144	1-9				{ Omitted
	25				175						{ *145-1457
92	1-3				798	144					{ Omitted
	4				*831		10	13	24		{ *1450-1457
	5				799	145					1004-1005
92	6	14	3		799	148					952
	7				799	149					3509
93					130	150					3960
94	1				Omitted	153					818-820
	2				1669	154		13	82		463
95	1-3				1361-1363	155					*12
96					3767	160	1				320, 589
98	1-4				1821-1824		2				940
	5	14	49		Omitted		3				1950, 1958
100	2	13	20		969		4				682-678
	3-5				980-982		5				682
	6				970		6				3798
	7				986		7				325
	9				983	162	2				1577, 1579
105					3791		3				1580
106	1-3				Omitted	165					*307, *2619
	4				*1692	166					457
	5-7				1694-1696	168					*3758

TABLES OF CORRESPONDING SECTIONS.

xli

CH.	SEC.	SESSION LAWS.			CODE OF '73.	CH.	SEC.	SESSION LAWS.			CODE OF '73.
		G. A.	Ch.	Sec.				G. A.	Ch.	Sec.	
169					*3759		7				1424
171	1				594, 615		8				Omitted
	2, 3				595, 596		9				*1425
	4	13	174	1	597		10				*1442
	5				597, 599		11				*1405
	6				596		12				2279
	7				598	179	13				*1433
	8	13	174	2	618		14, 15				*3825
	9				615	180		Rep. 13	100		*811
171	10				4007	181					1793
	11				*629	183					*1778
	14				600	185					4058, 4059
172	1				1278	188					531
	2	14	95		2582	189	1, 2				1271
173		14	106		1161-1168		3				Omitted
	1-8				1169		4				1272
	9	14	106	3	1170, 1171	190	1-4				861-864
	10, 11				1172	191					2198
	12	14	106	1	1173-1177	193	1				1908
	13, 17				1182		2				2442
	18				1183		3				1909
	19, 20	14	106	7	*1183		4				Omitted
	21-24				1178-1181	195	1-3				4060, 4061
	26				1069		4				2051
179	1-6				*1395-*1401	196					*1318

THIRTEENTH GENERAL ASSEMBLY.

CH.	SEC.	SESSION LAWS.			CODE OF '73.	CH.	SEC.	SESSION LAWS.			CODE OF '73.
		G. A.	Ch.	Sec.				G. A.	Ch.	Sec.	
3					*288, 240		4-6				268-270
8		14	76		1800		8				273
	1				1811		11, 12				274, 275
	2				1802	45		14	17		276, 3756
	3				Om. *1751	46					1862
	4				1808	47					783
	5				*535, 543-546	54	1, 2	14	126		289, 290
12					481		3, 4				291, 292
14					1560		5	14	69	1	293
18	1				1562		6	Rep. 14	69	2	Omitted
20					963	59					497
21					208	62					1247-1249
26		{ 14	18		1450-1457	65		14	45		*465-468
		{ 14	128		1847-1849	68					378
29	1-3				1850	69					4736-4743
	5				1775	74					4063
31					Omitted	77					*560
34		14	23	2	303	79					1681-1683
38					Omitted	80					470-476
41	2				*165	81					485, 484
	3				Omitted	82					Omitted
	4				135	83					2269-2271
42					3049	84					Omitted
43					267	87					1585-1602
44	1				271, 272	88					1984
	2, 3				89						829-831

TABLES OF CORRESPONDING SECTIONS.

CH.	SEC.	SESSION LAWS.			CODE OF '73.	CH.	SEC.	SESSION LAWS.			CODE OF '73.
		G. A.	Ch.	Sec.				G. A.	Ch.	Sec.	
90					866, 890		2				2143, 2529
91					1260, 1261	142					2619
94		Rep. 14	125		*1797, 1798	144					129, 130
98					2015	145		14	92		1885
100					811	146					277
102		Rep. 14	50		1317-1323	148	1-3				294-296
106					1160		4				3791
108					1383		5				297
109	1				1384		6				298, 782, 783
	3	14	135	1	1385		7				299
	5				1386	150					3093, 3094
	6	14	135	1	1387-1389	151					1091
109	7-9				1389	152					3788, 3789
109	10	14	135	1	1390	153	1				Omitted
	11				1391		2				161
	12	14	135	1	1392		3				2317
	13-27				1393-1421		4				2312
	28-30				1403-1405	153	5				2350
	31, 32				1416, 1415	156					4042
	33, 34				1406, 1407	158	2				2321
	35				1422		3				*2338
	36-38				1442-1444		4, 5				2340, 2341
	39, 40				1423, 1424		6				2353
	41				1408		7				2332
	42, 43				1425, 1426		8, 9				2347, 2348
	44	14	135		1427		10, 11				2362, 2363
	45				1428		12				2365
	46				1453		13				2357
	47				1409		14				2370
	48				1410, 3825		15				2389
	49				1445		16, 17				2399, 2400
	50				2616		18				2366
	51				1411		19, 20				2408-2411
	52, 53				1429, 1430		21				2412
	54				1434		22				Omitted
109	55, 56				1431, 1432	159	1, 2				1217
112	1-3				3755-3757		3				1218-1220
	4				3769		4, 5				1222
	5				3774		6				1220
	6, 7				3779, 3780	159	7				1223
	8				3778		8				12-6
116	1-12				1697-1708		9				1221
	13				Omitted		10				1225
	14-17				1709-1712		11				1227
121					1307	160					*1966-1968
122	9				138	161	1				2951
124	1				1825, 1826		2				2955
	2				Omitted	165					2188
	3, 4				1827, 1828	166					2793
125	1				1253	167	2				215
	2				Omitted		3				235
126					2212, 2213		4-6				238-240
127					2220		7				231
129	1				1675		8				241
	4				*1679		9				2530
131					*1386		10				2534
133					1921		11				2562
137					*4190		12				2564
138	1, 2				838, 839		13				2590
	3				868		14				2592
139					1304		15				2612
140	1				2133	167	16				2629

TABLES OF CORRESPONDING SECTIONS.

xliii

CH.	SEC.	SESSION LAWS.			CODE OF '73.	CH.	SEC.	SESSION LAWS.			CODE OF '73.
		G. A.	Ch.	Sec.				G. A.	Ch.	Sec.	
	17				2745		7				1092
	18				2672	172	8, 9				1095, 1096
	19				2730		10				1100
	20				744	174	1				597
	21				2968		2, 3				618, 619
	22, 23				99, 3000		4				601
	24				3002	175		14	97		3820
	25				*3011	176	1-3				4031, 4032
	26				3046		4				1482
	27				3 72-3077		5, 6				Omitted
	28				{ 3072, 3075.		7, 8				4033, 4034
					1 3076		9, 10				1483, 1484
	29				3092	177	1-5	14	66		4062
	30				3102	178					2177-2182
	31				3268	179					527
	32, 33				3274, 3275		181				314
	34				3722		183				373
172	2, 3				1061	185					3894
	4				1064	187					301
	5				Omitted	188					3627
	6				1082						

FOURTEENTH GENERAL ASSEMBLY.

CH.	SEC.	SESSION LAWS.			CODE OF '73.	CH.	SEC.	SESSION LAWS.			CODE OF '73.
		G. A.	Ch.	Sec.				G. A.	Ch.	Sec.	
1	1	{ 14	131		303, ¶ 24	24	1, 2				1527, 1528
		14	53				3-5				1537-1539
	2	14	130	2	527	25	1				Omitted
2		14	10		Omitted		2-5				1118-1121
3					799	26	1-5				1317-1321
4					Omitted		6				810, 1322
5					135		7				810
6	1-7				1310-1316		8				803
	8, 9				Omitted		9				Omitted
7					532		10				808
8					3187		11				1318
9					2597, 2598	27					:80
10					Omitted	23					Omitted
11	1				Omitted	29					204
	2				373	30	1	14	101		1184
12					2132		2, 3				1185, 1186
13		14	98		488		4				1187
14	1				3900	31					487
	2				Omitted	32	2				1957
16					681	33					1290
17					461	34	3-6				1881-1884
18					1458-1460	37	1				134
19		14	69		Omitted		2				Omitted
20	1-3				1509-1511		3, 4				135
	4				{ 1520-1522		5				3769, 3771
	5				{ 3822	38					766
21		14	132		*1509-1511	39					1299
22	1, 2				1780	40					469
	3				586, 636	41		Rep. Ex. S. 14	1		*T. 4, ch. 12
	4				3774, 162	42					072
	5				165	43	1-9				*4806
23	6				*163		10	14	108	1	*4806
					Omitted		11				*4806

TABLES OF CORRESPONDING SECTIONS.

CH.	SEC.	SESSION LAWS.			CODE OF '73.	CH.	SEC.	SESSION LAWS.			CODE OF '73.
		G. A.	Ch.	Sec.				G. A.	Ch.	Sec.	
...	12	14	108	2	*4806	96	.....	.....	.....	.....	4713
...	13, 14	.....	.....	.....	*4806	97	.....	.....	.....	.....	3820
44	.....	.....	.....	1567-1569	98	.....	.....	.....	.....	.....	488
45	1, 2	.....	.....	465, 466	99	1	.....	14	100	.....	181
.....	3	.....	.....	Omitted	.....	2	.....	.....	.....	.....	3777, 182
.....	4, 5	.....	.....	467, 468	.....	3, 4	.....	.....	.....	.....	3777, 182
.....	6	.....	.....	*478	100	.....	.....	.....	.....	.....	181
46	.....	.....	.....	1813	101	.....	.....	.....	.....	.....	1185, 1186
47	1, 2	.....	.....	3901	102	.....	.....	.....	.....	.....	378
.....	3	.....	.....	Omitted	103	.....	.....	.....	.....	.....	*1910
48	.....	.....	14	90	1098	105	.....	.....	.....	.....	Omitted
51	.....	.....	14	90	4779	106	1, 2	.....	.....	.....	1172-1144
52	1, 2	.....	.....	382	.....	3	.....	.....	.....	.....	1169
.....	3, 4	.....	.....	383-384	.....	4, 5	.....	.....	.....	.....	1183
.....	5, 6	.....	.....	384-601	.....	6	.....	.....	.....	.....	807
53	.....	.....	.....	303, ¶ 24	107	.....	.....	.....	.....	.....	1160
54	.....	.....	.....	4052-4054	108	.....	.....	.....	.....	.....	*4-66
56	.....	.....	.....	2049	109	1, 7	.....	.....	.....	.....	1901-1903
57	.....	.....	.....	552	.....	8	.....	.....	.....	.....	159, 1907
58	.....	.....	.....	3974	110	.....	.....	.....	.....	.....	1966, 1967
59	2, 3	.....	.....	1446, 1447	111	1, 2	.....	.....	.....	.....	Omitted
60	.....	.....	.....	1975	.....	3	.....	.....	.....	.....	4326
61	5	.....	.....	385	.....	4	.....	.....	.....	.....	Omitted
62	.....	.....	.....	1606, ¶ 6	.....	5	.....	.....	.....	.....	*489
63	.....	.....	.....	1922	.....	6	.....	.....	.....	.....	4557
64	.....	.....	.....	2586	.....	7	.....	.....	.....	.....	Omitted
65	.....	.....	.....	1307	.....	8	.....	.....	.....	.....	4327
66	.....	.....	.....	995	112	.....	.....	.....	.....	.....	399
67	.....	.....	.....	3328	113	.....	.....	.....	.....	.....	165
68	.....	.....	.....	1861	114	1	.....	.....	.....	.....	1775
69	.....	.....	.....	Omitted	.....	2	.....	.....	.....	.....	1745, ¶ 11
70	.....	.....	.....	135	115	.....	.....	.....	.....	.....	Omitted
71	.....	.....	.....	2338	116	.....	.....	.....	.....	.....	1646, 1647
72	.....	.....	.....	389	117	.....	.....	.....	.....	.....	4048
73	.....	.....	14	101	1815-1820	118	.....	.....	.....	.....	12
74	.....	.....	14	101	6-9	119	.....	.....	.....	.....	1252
75	.....	.....	.....	1623, 1624	120	.....	.....	.....	.....	.....	1-07-1215
76	.....	.....	.....	1-02, 1803	121	.....	.....	.....	.....	.....	627
78	1	.....	.....	471	122	.....	.....	.....	.....	.....	379
.....	2-4	.....	.....	472	123	.....	.....	.....	.....	.....	3230
.....	5, 6	.....	.....	473, 474	124	.....	.....	.....	.....	.....	894
.....	7	.....	.....	Omitted	125	1, 2	.....	.....	.....	.....	1798-1810
.....	8	.....	.....	475	126	.....	.....	.....	.....	.....	289
79	.....	.....	.....	1236-1240	127	.....	.....	.....	.....	.....	533
80	.....	.....	.....	1728	128	.....	.....	.....	.....	.....	*1503, *1289
82	.....	.....	.....	4018-4020	1-9	.....	.....	.....	.....	.....	2-67, 2068
83	.....	.....	.....	93	130	1	.....	.....	.....	.....	303, ¶ 24
84	.....	.....	.....	1717	.....	2	.....	.....	.....	.....	527
85	.....	.....	.....	1987	131	.....	.....	.....	.....	.....	1614
87	.....	.....	.....	3049	132	.....	.....	.....	.....	.....	1777, 1780
88	.....	.....	.....	3896	133	1	.....	.....	.....	.....	1715
89	.....	.....	.....	809	.....	2, 3	.....	.....	.....	.....	1771-1809
91	1-8	.....	.....	1435-1441	134	.....	.....	.....	.....	.....	3804-3806
.....	9	.....	.....	3826	.....	.....	.....	.....	.....	.....	{ 134, 13 6,
92	1-7	.....	.....	1885-1891	135	1	.....	.....	.....	.....	{ 1390, 1392,
.....	8	.....	.....	3762	.....	.....	.....	.....	.....	.....	{ 1427
.....	9-16	.....	.....	1892-1899	136	1, 2	.....	.....	.....	.....	3845, 3849
95	1-3	.....	.....	2582-2584	.....	3	.....	.....	.....	.....	*4712
.....	4	.....	.....	2611	137	.....	.....	.....	.....	.....	1812

A TABLE showing where the acts of a public nature, passed since the Code of 1873, may be found in this work, is inserted in the Second Volume, immediately preceding the index.

RULES OF PRACTICE

IN THE

SUPREME COURT.

ADOPTED JUNE 13, 1877.

AS AMENDED BY ORDER OF COURT, JUNE 14TH, 1879, BEING THE
RULES AS IN FORCE AT THE JUNE TERM, 1880.

I.—OF THE ORGANIZATION OF THE COURT.

SECTION 1. The Supreme Court consists of five Judges elected ^{Judges:} chief in the manner prescribed by law, the senior Judge being the ^{Justice.} Chief Justice.

SEC. 2. The presence of three Judges is necessary to constitute ^{Quorum.} a quorum for the transaction of business, but one alone may adjourn from day to day, or to any particular day, or until the next term. [Code, § 139.]

SEC. 3. The officers of the court are the Attorney-General, the ^{Officers.} Clerk, and the Reporter, who are elected in the manner prescribed by law; the Sheriff who is the acting Sheriff or a deputy of the Sheriff of the county in which the term is being held; and the attorneys and counselors-at-law admitted to practice therein.

II.—OF THE JURISDICTION OF THE SUPREME COURT.

1. *In Civil Actions.*

SEC. 4. The Supreme Court has an appellate jurisdiction over all judgments and decisions of the circuit and district courts from ^{Jurisdiction in civil actions} which appeals are allowed by law, as well in cases of civil actions properly so called, as in proceedings of a special or independent character. [Code, § 3163.]

SEC. 5. The Supreme Court may also review the following ^{May review orders.} orders made by the circuit or district court:

1. An order made affecting a substantial right in an action, when such order, in effect, determines the action and prevents a judgment from which an appeal might be taken.

2. A final order made in special proceedings affecting a substantial right therein, or made on a summary application in an action after judgment.

3. When an order grants or refuses, continues or modifies a provisional remedy; or grants, refuses, dissolves, or refuses to dissolve an injunction or attachment; when it grants or refuses a new trial, or when it sustains or overrules a demurrer.

4. An intermediate order involving the merits and materially affecting the final decision.

5. An order or judgment on *habeas corpus*.

If any of the above orders are made by a judge of the district or circuit court, they are in that case reviewable in the same way as if made by the court. [Code, § 3164.]

Allowance of appeals on intermediate orders.

SEC. 6. The Supreme Court may also, in its discretion, prescribe rules for allowing appeals on such other intermediate orders or decisions as they may think expedient, and for permitting the same to be taken and tried during the progress of the trial in the court below; but such intermediate appeals must not retard proceedings in the trial in chief in the court below. [Code, § 3166.]

General supervision.

SEC. 7. The Supreme Court has a general supervision over the district and circuit court and all other inferior judicial tribunals to prevent and correct abuses, where no other remedy is provided by law. [Constitution, Art. 5, Sec. 4.]

Mandates: how enforced:

SEC. 8. The Supreme Court shall have power to enforce its mandates upon inferior courts and officers by fine and imprisonment, which imprisonment may be continued until the mandates are obeyed [Code, § 3200.]

Process.

SEC. 9. The Supreme Court may issue all writs and process necessary for the exercise and enforcement of its appellate jurisdiction. [Code, § 3172.]

III.—OF THE TERMS OF THE SUPREME COURT.

Number of.

SEC. 10. Two terms of the Supreme Court shall be held in each year at the capital, one commencing on the first Monday of June and the other on the first Monday in December. Two terms shall be held in each year at the city of Davenport, commencing, one on the first Monday in April, and the other on the first Monday in October; and two at the city of Dubuque, one commencing on the third Monday in April and the other on the third Monday in October; and two at the city of Council Bluffs, one commencing on the third Monday in March, and the other on the third Monday in September. [Code, 1873, § 134.]

At Davenport.

SEC. 11. Cases appealed from the counties of Scott, Clinton, Johnson, Iowa, Cedar, Muscatine, Louisa and Washington, shall be heard at the term at Davenport; those appealed from the counties of Dubuque, Clayton, Allamakee, Winneshiek, Mitchell, Chicasaw, Floyd, Jackson, Bremer, Butler, Black Hawk, Grundy, Buchanan, Delaware, Fayette, Jones, Linn, Benton, and Howard, shall be heard at the term at Dubuque; those appealed from the counties of Fremont, Page, Taylor, Ringgold, Union, Adams, Montgomery, Mills, Pottawattamie, Cass, Shelby, Harrison, Monona, Crawford, Woodbury, Ida, and Plymouth, shall be heard at the

term at Council Bluffs. Appeals from all other counties shall be heard at the term at Des Moines, as provided by law.

When a cause is continued, it shall be heard at the next regular term at the city where the order of continuance is made unless otherwise ordered. [Code, § 136.]

With the consent of the appellee indorsed in writing on the notice of appeal, a cause may be taken from any county to any place where it is provided the court shall be held. [Code, § 135.]

IV.—OF APPEALS TO THE SUPREME COURT.

1. In Civil Cases.

SEC. 12. No appeal to the Supreme Court shall be taken except within six months from the *rendition* of the judgment or order appealed from. Unless the case involves an interest in real estate no appeal where the amount in controversy is shown by the pleadings does not exceed one hundred dollars will be considered, except to dismiss the same unless the trial judge certifies the question of law upon which the decision of this court is desired. And no other question except the one so certified shall be considered. This rule, so far as it is in addition to the statute, shall not take effect until January 1st, 1878. [Code, § 3173.]

SEC. 13. An appeal shall not be perfected until the notice thereof has been served upon both the party and the clerk, and the clerk paid or secured (unless already secured) his fees for a transcript; whereupon the clerk shall forthwith transmit by mail, express, or a safe and less expensive messenger, not a party, nor the attorney of a party, a transcript of the record in the cause, or of so much thereof as the appellant in writing in the notice has directed, to which shall be appended copies of the notices of appeal, and of the supersedeas bond, if any; but the parties may, either in person or by their attorneys, agree in writing to submit the same to the court upon the printed abstract of the record hereinafter required; and when such agreement in writing is appended to the printed abstract filed, no transcript of the record shall be filed, or costs therefor be taxed in the cause. In all cases in which the appellee intends to demand judgment upon the supersedeas bond in this court, the bond must be certified to this court, and appended to the transcript, or to the agreed abstract. [Code, § 3179, with additional provisions adopted by the court.]

SEC. 14. An appeal is taken by the service of a notice in writing on the adverse party, his agent, or any attorney who appeared for him in the case in the court below, and also upon the clerk of the court wherein the proceedings were had, stating the appeal from the same, or from the specific part thereof, defining such part. [Code, § 3178.]

SEC. 15. An appeal from part of an order, or from one of the judgments of a final adjudication, or from part of a judgment, shall not disturb or delay the rights of any party to any judgment or part of a judgment, or order not appealed from, but the same shall proceed as if no such appeal had been taken. [Code, § 3177.]

SEC. 16. The notices of appeal must be served thirty days and the cause filed and docketed at least fifteen days before the first

day of the next term of the Supreme Court, or the same shall not then be tried, unless by consent of parties. If the appeal is taken less than thirty days before the term, it must be so filed and docketed before the next succeeding term. [Code, § 3180.]

Defendant in default not personally served: how served with notice of appeal.

SEC. 17. In cases in which there was a default in the court below, and no personal service on defendant, and no appearance by him, the plaintiff may appeal, and make service of the notice of appeal in the same manner that service of original notice is made on non-resident defendants. If the appellee is a non-resident, but has an agent residing in the state, the notice may be served upon such agent, and such service shall take the place of publication in a newspaper. The proof of such service shall be made in the manner prescribed for proof of service of original notice on non-resident defendants. [*McClellan v. McClellan*, 2 Iowa, 312.]

Causes: how docketed.

SEC. 18. The cause shall be docketed as it was in the court below, and the party taking the appeal shall be called the appellant, and the other party the appellee. [Code, § 3171.]

Service and filing of appellant's abstract.

SEC. 19. At least thirty (30) days before the day assigned for the hearing of a cause, the appellant shall serve upon the attorney for each appellee a printed copy of so much of the abstract of record as may be necessary to a full understanding of the questions presented for decision (said abstract to be prepared as required by sections 97, 98 and 99). He shall also, fifteen (15) days before the first day of the term for which the cause is to be docketed for trial, file with the Clerk ten (10) copies of said abstract, and no cause will be heard until thirty (30) days after such service and fifteen (15) days after such filing with the Clerk; nor shall it be docketed unless this and other rules shall be complied with. In case of cross appeals the party first giving notice of appeal shall, under this rule, be considered the appellant.

[As amended by order of court, June 14th, 1879.]

Same as to abstract of appellee.

SEC. 20. If the appellee's counsel shall deem the appellant's abstract imperfect or unfair he may, within ten days after receiving the same, deliver to the appellant's counsel one printed copy, and to the clerk of the court ten printed copies of such further or additional abstract, as he shall deem necessary to a full understanding of the questions presented to this court for decision.

What deemed part of the record.

SEC. 21. In an action by ordinary proceedings, and in an action by equitable proceedings tried upon oral evidence, all proper entries made by the clerk, and all papers pertaining to the cause and filed therein (except subpoenas, depositions, and other papers which are used as mere evidence), are to be deemed part of the record. But in an action by equitable proceedings tried upon written evidence, the depositions and all papers which were used as evidence are to be certified up to the Supreme Court, and shall be so certified, not by transcript, but in the original form. But a transcript of a motion, affidavit, or other paper, when it relates to a collateral matter, shall not be certified, unless by direction of the appellant. If so certified, when not material to the determination of the appeal, the court may direct the person blameable therefor to pay the costs thereof. But the parties may agree, in writing, to submit the cause upon the printed abstracts,

as provided in section twenty hereof. [Code, § 3184, with additional provisions adopted by the court.]

SEC. 22. If the appellant, having taken an appeal fifteen days before the term, fails to file a transcript and abstracts in the Supreme Court on the morning of the first day of that part of the term devoted to causes from the district whence comes the appeal, or, if not taken as many as fifteen days before the term, he fail to have the cause so filed at the next succeeding term on the morning aforesaid, or has failed to file the printed abstract required, in either event, unless the appellant file at the same time, when such transcript should be filed, the certificate of the clerk stating when he was served with notice, and that he has not had sufficient time to prepare a transcript, or if the abstract has not been filed, his own affidavit showing that he has not had time since the appeal was taken to prepare and furnish such abstract, the appellee may file a transcript of the judgment, and of the notice served on the clerk, and may, on motion, have the appeal dismissed or the judgment affirmed. [Code, § 3181, with additional provisions adopted by the Supreme Court.]

SEC. 23. If the transcript has not been sent up, or the appellant does not file the same, or does not file an abstract when the same should be filed as herein provided, the appellee may file the same, and may, on motion, have the appeal dismissed or the judgment affirmed, as the court from the circumstances of the case shall determine. [Code, § 3182, with additional provisions adopted by the Supreme Court.]

SEC. 24. If, the transcript and abstract being filed, errors are not assigned by the morning of the first day devoted to causes from the district whence comes the appeal, the appellee may, on motion, have the appeal dismissed, or the judgment or order affirmed, unless a good cause for the failure is shown by affidavit. [Code, § 3183, with additional provisions adopted by Supreme Court.]

SEC. 25. A part of several co-parties may appeal, but in such case they must serve notice of the appeal upon all the other co-parties, and file the proof thereof with the clerk of the Supreme Court. [Code, § 3174.]

SEC. 26. If the other co-parties refuse to join, they cannot nor can any of them take an appeal afterward; nor shall they derive any benefit from the appeal, unless from the necessity of the case. [Code, § 3175.]

SEC. 27. Unless they appear and decline to join, they shall be deemed to have joined, and shall be liable for their due proportion of costs. [Code, § 3176.]

SEC. 28. The death of one or all of the parties shall not cause the proceedings to abate, but the names of the proper persons shall be substituted, as is provided in such cases in the District Court, and the cause may proceed. The court may also in such case grant a continuance, when such a course will be calculated to promote the ends of justice. [Code, § 3211.]

SEC. 29. Where appellant has no right, or no further right to prosecute the appeal, the appellee may move to dismiss the appeal, and if the grounds of the motion do not appear in the record, or by writing, purporting to have been signed by the

Failure to file transcript and abstract:
dismissal or affirmance.

appellant, and filed, they must be verified by affidavit. [Code, § 3212.]

SEC. 30. The appellee may, by answer filed and verified by himself, agent or attorney, plead any facts which render the taking of the appeal improper, or destroy the appellant's right of further prosecuting the same, to which answer the appellant may file a reply, likewise verified by himself, his agent or attorney, and the question of law or fact therein shall be determined by the court. [Code, § 3213.]

Issue as to
right to take
or prosecute
appeal.

Method of
service.

Transcript:
how perfected.

Original
papers
transmitted.

Proceedings:
how stayed.

Bond.

SEC. 31. The service of all notices of appeal, or in any way growing out of such right, or connected therewith, and all notices in the Supreme Court, shall be in the way provided for the service of like notices in the District Court, and they may be served by the same person and returned in the same manner, and the original notice of appeal must be returned, immediately after service, to the office of the clerk of the District Court where the suit is pending. [Code, § 3214.]

SEC. 32. It shall be the duty of the appellant to file a perfect transcript, and to that end the clerk of the court below must at any time, on his suggestion of the diminution of the record, and on the payment of fees, certify up any omitted part of the record, according to the truth, as the same appears in his office of record; and such applicant shall not be entitled to any continuance, in order to correct the record, unless it shall clearly appear to the court that he is not in fault, subject to which requirement either party may, on motion before trial day, obtain an order on the clerk of the court below, commanding him to transmit at once to the Supreme Court a true copy of such imperfect or omitted part of the record as shall be in general terms described in the affidavit or order. Such motion must be supported by affidavit, unless the diminution be apparent, or admitted by the adverse party, and must not be granted unless the court be satisfied that it is not made for delay. [Code, § 3185.]

SEC. 33. Where a view of an original paper in the action may be important to a correct decision of the appeal, the court may order the clerk of the court below to transmit the same, which he shall do in some safe mode, to the clerk of the Supreme Court, who shall hold the same subject to the control of the court. [Code, § 3209.]

SEC. 34. An appeal shall not stay proceedings on the judgment or order, or any part thereof, unless a supersedeas is issued, and no appeal or supersedeas shall vacate or affect the lien of the judgment appealed from. [Code, § 3186.]

SEC. 35. A supersedeas shall not be issued until the appellant shall cause to be executed before the clerk of the court which rendered the judgment or order, by one or more sufficient sureties, to be approved by such clerk, a bond to the effect that the appellant shall pay to the appellee all costs and damages that shall be adjudged against the appellant on the appeal; also, that he will satisfy and perform the judgment or order appealed from, in case it shall be affirmed, and any judgment or order which the Supreme Court may render, or order to be rendered, by the inferior court, not exceeding in amount or value the original judgment or order, and all rents, or hire, or damages to property

during the pendency of the appeal, out of the possession of which the appellee is kept by reason of the appeal. If the bond is intended to stay proceedings on only a part of the judgment or order, it shall be varied so as to secure the part superseded alone. When such bond has been approved by the clerk and filed, he ^{Supersedes.} shall issue a written order, commanding the appellee and all others to stay proceedings in such judgment or order, or on such part as is superseded, as the case may be. [Code, § 3186.]

SEC. 36. If the appellee believe the supersedesas bond defective, or the sureties insufficient, he may move the Supreme Court, if in session, or in its vacation, on ten days' written notice to the appellants, may move any judge of said court, or the judge of the court where the appeal was taken, to discharge the supersedesas; and if the court, or such judge, shall consider the sureties insufficient, or the bond substantially defective in securing the rights of the appellee, the court or such judge shall issue an order discharging the supersedesas, unless a good bond with sufficient sureties be executed by a day by him fixed. The order, if made by a judge, shall be in writing, and be signed by him, and upon its filing, or the filing of a certified copy of the order when made in court, in the office of the clerk of the court from which the appeal was taken, execution and other proceedings for enforcing the judgment or order may be taken, if a new and good bond is not filed and approved by the day fixed as aforesaid. [Code, § 3188.]

SEC. 37. But another supersedesas may be issued by the clerk upon the execution before him, of a new and lawful bond, with sufficient sureties as hereinbefore provided. [Code, § 3189.] ^{Another to issue.}

SEC. 38. If the judgment or order is for the payment of money, the penalty shall be at least twice the amount of the judgment and costs; if not for the payment of money, the penalty shall be sufficient to save the appellee harmless from the consequences of taking the appeal. But it shall in no case be less than one hundred dollars. [Code, § 3190.]

SEC. 39. The taking of the appeal from a part of a judgment, or order, and the filing of a bond as above directed, does not cause a stay of execution as to any part of the judgment or order not appealed from. [Code, § 3191.] ^{Partial appeal: effect of.}

SEC. 40. If execution has issued prior to the giving of the bond above contemplated, the clerk shall countermand the same. [Code, § 3192.] ^{Execution recalled.}

SEC. 41. Property levied upon and not sold at the time such countermand is received by the sheriff shall forthwith be delivered up to the judgment debtor. [Code, § 3193.] ^{Property released.}

2. In Criminal Actions.

SEC. 42. The mode of reviewing in the Supreme Court any judgment, action, or decision of the District Court in a criminal cause is by appeal. [Code, § 4520.] ^{Mode of review.}

SEC. 43. Either the defendant or the State may take an appeal. [Code, § 4521.] ^{By whom taken.}

SEC. 44. No appeal can be taken until after judgment, and then only within one year thereafter. [Code, § 4522.] ^{Time for appeal.}

SEC. 45. An appeal is taken, by the party taking it, or the attorney of such party, serving on the adverse party, or on the

attorney of the adverse party, who acted as attorney of record in the District Court, at the time of the rendition of the judgment, and also on the clerk of the District Court, by which the judgment was rendered, a notice in writing of the taking of the appeal from the judgment. [Code, § 4023.]

When deemed taken. SEC. 46. The appeal is deemed to be taken when the notices thereof required by the last section, are filed in the office of the clerk of the court in which the judgment was rendered, with evidence of the service thereof indorsed thereon, or annexed thereto. [Code, § 4524.]

Transcript: what to contain. SEC. 47. When an appeal is taken, it is the duty of the clerk of the court, in which the judgment was rendered, without unnecessary delay, to make out a full and perfect transcript of all the papers in the case on file, in his office (except the papers returned by the examining magistrate, on the preliminary examination, where there has been one, and the minutes of the evidence of the witnesses examined before the grand jury), and of all entries made in the record book, and certify the same under his hand and the seal of the court, and transmit the same to the clerk of the Supreme Court. [Code, § 4525.]

Stay of judgment. SEC. 48. An appeal taken by the State in no case stays the operations of the judgment in favor of the defendant. [Code, § 4527.]

Same. SEC. 49. An appeal taken by the defendant does not stay the execution of the judgment, unless bail be put in, except as provided in the next section. [Code, § 4528.]

Defendant detained in custody. SEC. 50. Where the judgment is imprisonment in the penitentiary, and an appeal is taken during the term at which the judgment is rendered, and the defendant is unable to give bail, and that fact is satisfactorily shown to the court, it may in its discretion order the sheriff or officer having the defendant in custody, to detain him in custody, without taking him to the penitentiary, to abide the judgment on the appeal, if the defendant desire it. [Code, § 4529.]

Bail on appeal. SEC. 51. When an appeal is taken by the defendant, in a bailable case, and bail is put in, it is the duty of the clerk to give forthwith to the defendant, his agent or attorney, a certificate under his hand and the seal of the court, stating that an appeal has been taken and bail put in, and the sheriff or other officer having the defendant in custody must, upon the delivery of such certificate to him, discharge the defendant from custody, where imprisonment forms any part of the judgment, and cease all further proceedings in execution of the judgment, and return forthwith to the clerk of the court, who issued it, the execution or certified copy of the entry of judgment, under which he acted, with his return thereto, if such execution or certified copy has been issued, and if such execution or certified copy has not been issued, it shall not be issued, but shall abide the judgment on the appeal. [Code, § 4530.]

Appeal by co-defendants. SEC. 52. When several defendants are indicted and tried jointly, any one or more of them may join in taking the appeal, but those of their co-defendants who do not join shall take no benefit therefrom, yet they may appeal afterward. [Code, § 4526.]

Docketing of appeal. SEC. 53. The party taking the appeal is known as the appellant, the adverse party as the appellee, but the title of the action

is not changed in consequence of the appeal; it shall be docketed in the Supreme Court as it was in the District court. [Code, § 4531.]

V.—OF THE TRIAL, DECISION AND EXECUTION.

1. *In Civil Cases.*

SECTION 54. An assignment of error need follow no stated form, but must, in a way as specific as the case will allow, point out the very error objected to. Among several points in a demurrer or in a motion, or instructions, or rulings in an exception, it must designate which is relied on as an error, and the court will only regard errors which are assigned with the required exactness; but the court must decide on each error assigned. [Code, § 3207.]

SEC. 55. All motions must be entered in the motion book, and shall stand over till the next morning after that morning on which entered, and till after being publicly called by the court, unless the parties otherwise agree, and the adverse party shall be deemed to have notice of such motion. Motions will not be heard until the day set for hearing causes from the district whence the cause comes, in which the motion is made. [Code, § 3208.]

SEC. 56. Motions made in cause after judgment, or after the time assigned for the hearing of causes from the district from which it was appealed, will be heard only upon proof of service of reasonable notice of such motion upon the adverse party.

SEC. 57. To entitle an appellant to submit his case either orally or in print, he must serve copies of his brief of points and authorities or argument on counsel for each of the appellees at least thirty (30) days before the day assigned for the hearing of the case. The appellee shall serve copies of his brief or argument upon counsel for each appellant at least ten (10) days before the hearing, and the reply, if in print, shall be served at least three (3) days before the case is to be finally submitted. Each party shall file with the Clerk ten (10) copies of each brief or argument before the case is so submitted. A failure to comply with the above requirements will entitle the party not in default, unless the court shall for sufficient cause otherwise order, to a continuance, or to have the case submitted at his option upon the brief and argument on file when the default occurred. All briefs and arguments shall be prepared and printed as required by sections 94, 98 and 99 hereof.

[As amended by order of court June 14th, 1879.]

SEC. 58. All arguments in addition to oral ones shall be in print; proper evidence of the service upon opposing counsel of printed matter in a cause shall be filed therewith, and the clerk shall note upon the docket the date of each service. All manuscripts and printed arguments shall be filed with the Clerk, and he shall not transmit to the Judges any paper not served and filed in time under the rules, nor shall any argument or brief be considered which does not go through the hands of the Clerk. No cause shall be entered as submitted until the arguments are finally and actually concluded.

[As amended by order of court, June 14th, 1879.]

- Oral arguments.** SEC. 59. Only two counsel will be heard on either side, and no oral argument shall exceed one hour in length, unless an extension of time be granted before the argument is commenced.
- Order of hearing.** SEC. 60. When the appeal presents to the court only questions of law upon rulings of the court below, the appellant shall open and close the argument; but when the trial in the Supreme Court is *de novo* of questions of fact, the party having the burden of proof shall open and close, and, as to printed briefs and arguments, shall observe the rules requiring the filing of such briefs and arguments by appellants.
- Calling of docket.** SEC. 61. At the commencement of each term the causes will be called in their order, but no cause will be tried on the first calling. [Rule 15, June Term, 1861, printed in 11 Iowa, 605, modified.]
- Written opinions.** SEC. 62. The opinions of the court on all questions reviewed on appeal as well as such motions, collateral questions, and points of practice as they may think of sufficient importance, shall be reduced to writing and filed with the clerk of the court.
- Dissent.** All dissenting opinions must be written and filed in the same manner.
- What opinions reported.** The records and reports must in all cases show whether a decision was made by a full bench, and whether either, and if so which, of the judges dissented from the decision. [Code, §§ 143, 151.]
- Judgment on appeal.** SEC. 63. If the decision, in the judgment of the court, is not of sufficient general importance to be published, it shall be so designated, in which case it shall not be reported in the reports, and no case shall be reported except by order of the full bench. [Code, § 145.]
- Judgment on bond.** SEC. 64. The Supreme Court may reverse or affirm the judgment or order below, or the part of either appealed from, or may render such judgment or order as the court below or judge should have done, according as it may think proper. [Code, § 3194.]
- Damages allowed.** SEC. 65. The Supreme Court, where it affirms the judgment, shall also, if the appellee moves therefor, render judgment against the appellant and his sureties on the bond above mentioned, for the amount of the judgment, damages, and costs referred to therein, in case such damages can be accurately known to the court without an issue and trial. [Code, § 3195.]
- Judgments: how enforced.** SEC. 66. Upon the affirmance of any judgment or order for the payment of money, the collection of which, in whole or in part, has been superseded by bond, as above contemplated, the court shall award to the appellee damages upon the amount superseded; and, if satisfied by the record that the appeal was taken for delay only, must award such sum as damages, not exceeding fifteen per cent. thereon, as shall effectually tend to prevent the taking of appeals for delay only. [Code, § 3196.]
- Writ of reconstitution.** SEC. 67. If the Supreme Court affirm the judgment or order, it may send the cause to the District Court to have the same carried into effect, or it may itself issue the necessary process for this purpose, and direct such process to the sheriff of the proper county, according as the party thereto may require. [Code, § 3197.]
- SEC. 68. If, by the decision of the Supreme Court, the appellee

lant becomes entitled to a restoration of any part of the money Writ of restitution or property that was taken from him by means of such judgment or order, either the Supreme or District Court may direct execution or writ of restitution to issue for the purpose of restoring to such appellant his property or the value thereof. [Code, § 3198.]

SEC. 69. Executions issued from the Supreme Court shall be the same as those from the District Court, attended with the same consequences, and shall be returnable in the same time. [Code, § 3215.]

SEC. 70. In cases in which the judgment below is affirmed in this court, the parties in whose favor the judgment is affirmed may have execution either from this court or the court below. In case of an execution from this court, if the process of garnishment is served upon the execution defendant, either principal or surety, the sheriff, in addition to his return, shall return a copy of the execution and his returns to the District or Circuit Court from which the cause was appealed, and all issues of fact which may arise in said garnishment process shall be tried by that court.

SEC. 71. The court shall hear all the cases docketed, when not continued by consent, or for causes shown by the party, and the party may be heard orally or otherwise, in his discretion. [Code, § 3204.]

SEC. 72. No cause is decided until the opinion in writing is filed with the clerk. [Code, § 3205.]

2. *In Criminal Actions.*

SEC. 73. Appeals in criminal cases shall be docketed in the Supreme Court for trial, at the commencement of that portion of the term which has been assigned for trying causes from the judicial district from which the appeal comes, which is twenty days after the date of the certificate of the transcript from the clerk of the district, and if the appellant does not file his transcript by that time with the clerk of the Supreme Court, the appellee may file his, and have the case docketed. They shall take precedence of all other business, and shall be tried at the term at which the transcript is filed, unless continued for cause, or by consent of the parties, and shall be decided, if practicable, at the same term. [Code, § 4532.]

SEC. 74. The personal appearance of the defendant in the Supreme Court, on the trial of an appeal is in no case necessary. [Code, § 4533.]

SEC. 75. An appeal shall not be dismissed for any informality or defect in taking the appeal, if the same be corrected within a reasonable time, and the Supreme Court must direct how it shall be corrected. [Code, § 4534.]

SEC. 76. No assignment of error, or joinder in error, shall be necessary. [Code, § 4535.]

SEC. 77. The defendant shall be entitled to close the argument. [Code, § 4536.]

SEC. 78. The opinion of the Supreme Court must be in writing, filed with its clerk, and recorded. [Code, § 4537.]

SEC. 79. If the appeal was taken by the defendant from a judgment against him, the Supreme Court must examine the record and, without regard to technical errors or defects, which do not

affect the substantial rights of parties, render such judgment on the record as the law demands. It may affirm, reverse, or modify the judgment, and render such judgment as the District Court should have rendered, and may, if necessary or proper, order a new trial. It may reduce the punishment, but cannot increase it. [Code, § 4538.]

Effect of judgment on appeal by state.

SEC. 80. If the appeal was taken by the State, the Supreme Court cannot reverse the judgment, or modify it, so as to increase the punishment, but may affirm it, and shall point out any error in the proceedings, or in the measure of punishment, and its decision shall be obligatory on the District Court, as the correct exposition of the law. [Code, § 4539.]

Discharge on reversal.

SEC. 81. If a judgment against the defendant be reversed, without ordering a new trial, the Supreme Court must direct, if the defendant be in custody, that he be discharged, or if he be admitted to bail, that his bail be exonerated, or, if money be deposited instead of bail, that it be refunded to him. [Code, § 4540.]

Effect of affirmation.

SEC. 82. On a judgment of affirmation against the defendant, the original judgment shall be carried into execution, as the Supreme Court shall direct, except as hereinafter provided. [Code, § 4541.]

Judgment rendered; proceeded.

SEC. 83. When a judgment of the Supreme Court is rendered it must be recorded, and a certified copy of the judgment must be forthwith remitted to the clerk of the District Court in which the judgment appealed from was rendered, with proper instructions, and a copy of the opinion, in such time, and in such manner, as the Supreme Court may, by rule, prescribe. [Code, § 4542.]

Further proceedings in lower court.

SEC. 84. After the certified copy of the entry of the judgment of the Supreme Court, and its instructions, have been remitted, as provided in the preceding section, the Supreme Court has no further jurisdiction of the proceedings therein, and all proceedings which may be necessary to carry the judgment of the Supreme Court into effect must be had in the court to which it is remitted, or by the clerk thereof, except, as provided in the next two sections. [Code, § 4543.]

Judgment enforced.

SEC. 85. Unless where some proceedings in the District Court are directed by the Supreme Court, a copy of the certified copy of the judgment of the Supreme Court, with its directions certified by the clerk of the District Court, to whom the same has been transmitted, delivered to the sheriff or other proper officer, shall authorize him to execute the judgment of the Supreme Court, or take any steps to bring the proceedings to a conclusion, except as provided in the next section. [Code, § 4544.]

Term of imprisonment deducted from term of second sentence.

SEC. 86. If a defendant, who has been imprisoned during the pendency of an appeal, upon a new trial ordered by the Supreme Court, shall be again convicted, the period of his former imprisonment shall be deducted by the District Court from the period of imprisonment to be fixed, on the last verdict of conviction. [Code, § 4545.]

VI.—REHEARING.

SEC. 87. No petition for rehearing shall be filed after sixty days from the filing of the opinion of this court.

SEC. 88. The petition for rehearing shall be the argument of Petition, the applicant therefor, and if the court think that such argument requires a reply, it shall so indicate to the other party, and he may make reply within such time as said court shall allow, and Reply. with a view to a rehearing, the court may extend the suspension of proceedings yet farther, if need be. [Code, § 3202.]

SEC. 89. All petitions for rehearing shall be printed as re- To be in print: quired by section 111 hereof, and a copy shall be delivered to the service of by attorney of the adverse party, and if there be more than one, to the attorney of each, and nine copies to the clerk of this court.

SEC. 90. The opinions announcing the decisions of this court Copy of in cases wherein petitions for rehearing are filed shall be printed opinion to accompany by the petitioners, and copies thereof shall accompany the printed copies of the petition for rehearing filed with the clerk or servcd on the opposite party.

Oct. 22, 1879, it was ordered by the Court, "That Rule 90 be suspended in its operation in all cases wherein the opinions of this Court are published in The Northwestern Reporter, before the petitions for rehearing are filed; counsel in such cases being required to refer to the number and page of the Reporter in which the opinions are printed."

SEC. 91. If a petition for rehearing be filed, the same shall sus- Proceedings suspended. pend the decision or procedendo, if the court, on its presentation, or one of the judges, if in vacation, shall so order, in either of which cases such decision and procedendo shall be suspended until the next term. [Code, § 3201.]

VII.—OF COSTS.

SEC. 92. The appellant may be required to give security for costs, security for under the same circumstances as those in which plaintiffs in civil actions in the court below may be so required. [Code, § 3210.]

SEC. 93. When the parties or their attorneys shall furnish Printer's fee tax'd as costs. printed abstracts, briefs, arguments and petitions for rehearing, in conformity to the rules of this court, it shall be the duty of the clerk to tax a printer's fee at the rate of one dollar for every five hundred words embraced in a single copy of the same, against the unsuccessful party not furnishing the same, to be collected and paid to the successful party as other costs. When unnecessary costs have been made by either party the court will, upon application, tax the same to the party making them, without reference to the disposition of the case.

VIII.—OF PREPARING TRANSCRIPTS AND ABSTRACTS, AND PRINTING ABSTRACTS, BRIEFS, ARGUMENTS, AND PETITIONS FOR REHEARING.

SEC. 94. All abstracts, briefs, arguments, and petitions for re- Form of hearing shall be printed upon unruled writing paper, with the abstracts and arguments. type commonly known as small pica, leaded lines, the printed page to be four inches wide and seven inches long, with a margin of two inches, but the type in which extracts are printed may be small pica solid, or brevier with leaded lines.

The first page of the abstract, brief or argument, shall show the Title page. title of the cause, designating the appellant and the appellee, the term of the Supreme Court to which the appeal is brought, the court from which the appeal is taken, the names of counsel for both the appellant and appellee.

SEC. 95. No procedendo, except in criminal cases, and in cases

When proceedings to issue. where petitions for rehearing have been overruled, shall issue in any case until the expiration of thirty days from the filing of the opinion in the case, except upon an order of one of the justices of the court, upon cause shown.

Decrees to be prepared by counsel. SEC. 96. Decrees to be entered in this court shall be prepared by the counsel of the parties in whose favor they are rendered. Copies shall be served on the opposite counsel, and filed in this court within twenty days after counsel preparing them shall have received notice of the decision in the causes in which they are to be entered.

Same. SEC. 97. When, by the decision of this court, a decree is to be entered in this court at the option of either party, such option shall be declared and a decree furnished under the above rule within twenty days from the date at which counsel required to prepare the decree received notice of the decision.

Index to abstract. The abstract must be accompanied by a complete index of its contents, and must show where the papers and entries therein mentioned may be found in the transcript as well as in the abstract.

Form for abstract. SEC. 98. Abstracts of records shall be made substantially in the following form :

IN THE SUPREME COURT OF IOWA,
DECEMBER TERM, 187...

JOHN DOE, Appellant,	}	Appellant's Abstract of Record.
<i>agt.</i>		
RICHARD ROE, Appellee.		("In Equity," or "At Law.")

Appeal from the Judgment of the Van Buren District Court.

*J. C. K., for the Appellant.
H. H. S., for the Appellee.*

On the.....day.....187.., the plaintiff filed in the Van Buren District Court a

PETITION

stating his cause of action as follows:

(Set out all of petition necessary to an understanding of the questions to be presented to this court and no more. In setting out exhibits, omit all merely formal, irrelevant parts, as for example, if the exhibit be a deed or mortgage and no question is raised as to the acknowledgment, omit the acknowledgment.)

When the defendant has appeared it is useless to encumber the record with the original notice, or the return of the officer. Appendix to the abstract of each paper a reference to the page of the transcript on which it will be found.)

On the.....day of.....A. D. 187.., the defendant filed a

DEMURRER

to said petition setting up the following grounds:

(State only the grounds of demurrer, omitting the formal parts. If the pleading was a motion and the ruling thereon is one of the

questions to be considered, set it out in the same way, and continue.)

And on the.....day of.....187.., the same was submitted to the court, and the court made the following rulings thereon:

(Here set out the ruling. In every instance let the abstract be made in the chronological order of the events in the case—letting each ruling appear in the proper connection. If the defendant pleaded over, and thereby waived his right to appeal from these rulings, no mention of them should be made in the abstract, but it should continue.)

And on the.....day of.....187.., the defendant filed his

ANSWER

to the petition, setting up the following defenses:

(Here set out the defenses, omitting all formal parts. If motions or demurrer were interposed to this pleading, proceed as directed with reference to the petition.

Frame the record so that it will properly present all questions to be reviewed and raised before issue is joined. When the abstract shows issue joined, proceed.)

On the....day of.....187.., said cause was tried by a jury (or the court, as the case may be) and on the trial the following proceedings were had:

(Set out so much of the bill of exceptions as is necessary to show the ruling of the court to which exceptions were taken during the progress of the trial.

INSTRUCTIONS.

After the evidence and the arguments of counsel were concluded, the plaintiff (or defendant, as the case may be) asked the court to give each of the following instructions to the jury,

(Set out the instructions referred to, and continue), which the court refused as to each instruction, to which said several rulings the plaintiff (or defendant) excepted at the time, and thereupon the court gave the following instructions to the jury:

(Set out the instructions.)

To the giving of those numbered (give the numbers) and to the giving of each thereof the plaintiff (or defendant) at the time excepted.

VERDICT.

On the....day of....., 187.., the jury returned into court with the following verdict:

(Set out the verdict.)

MOTION FOR NEW TRIAL.

On the....day of.....187.., the plaintiff (or defendant)

filed a motion praying the court to set aside the verdict and grant a new trial, upon the following grounds:

(Set out the grounds aforesaid for the new trial.)

On the....day of.....187.., the court made the following ruling upon said motion:

(Set out the record of the ruling to which the plaintiff (or defendant) at the time excepted.)

JUDGMENT.

On the....day of....., 187.., the following judgment was entered:

(Set out the judgment entry appealed from.)

On the....day of....., 187.., the plaintiff perfected an appeal to the Supreme Court of the State of Iowa, by serving upon the defendant and the clerk of the District Court of Van Buren county a notice of appeal.

(If supersedeas bond was filed, state the fact.)

ASSIGNMENT OF ERRORS.

And the appellant herein says there is manifest error on the face of the record in this:

(Set out the errors assigned.)

(To the abstract of each paper and entry append a reference to the page of the transcript on which it will be found. This will not be necessary when the case is submitted on the printed abstract without the transcript.

This outline is presented for the purpose of indicating the character of the abstracts contemplated by the rule, which, like all the rules, is to be substantially complied with. Of course, no formula could be laid down applicable to all cases. The rule to be observed in abstracting a case is: *Preserve everything material to the questions to be decided, and omit everything else.*)

Form of argument.

SEC. 99. The printed brief and argument shall state in divisions thereof, properly numbered, the several propositions of law claimed by the party making such brief or argument to be involved in the case before the Supreme Court, and the authorities relied upon in the support of the same. When an authority cited is an adjudicated case, the brief or argument must show the names of the parties, the volume in which it is reported, and the page or pages containing the matter to which counsel desire to call the attention of the court. When the reference is a text-book, the number or date of the edition must be stated with the number of the volume and page.

Form of transcript.

SEC. 100. Transcripts of record prepared for the Supreme Court shall be made substantially in the manner following, viz

State of Iowa, }
County of.....}

Pleas before the District (or Circuit) Court of Iowa, at a term

begun and holden in the county of.....on the.....day of.....A. D. 187.., before the Hon. J. H. G., Judge of the.....Judicial District (or Judge of the.....Circuit, in the.....Judicial District) of the State of Iowa.

A. B. {
agt.
C. D. }

Be it remembered that heretofore, to wit: on the..... day of.....A. D. 187.., a petition was filed in the office of the clerk of the District (or Circuit) Court, in and for the county of.....in the words and figures following, to wit:

(Here insert the petition in full.)

(Proceed in the same manner in relation to whatever paper is filed, such as the original notice, or a petition for attachment, etc.

If the cause has come from another county by a change of venue, begin as above, "Be it remembered," and state in manner all that was done in the county *from* which the venue was changed.)

And afterward there was filed in the office of the said clerk a notice, in the words and figures following, to-wit:

(Here insert the notice in full.)

(Copy all indorsements on the face of the transcript, or copy of record, and not upon the back of the leaf.)

Upon which (or attached to which) was a return as follows:

(Copy the officer's return, with all indorsements in full; if the suit be by attachment, copy the petition or affidavit, writ or attachment, bond, notice, return, etc.)

And afterward, to-wit: on theday of.....A. D. 187.., there was filed in the office of the said clerk, and answer in the words and figures following, to-wit:

(Here insert answer in full.)

(Should the clerk doubt what the paper is, let him call it a "paper in the words and figures following," etc.

Where a paper is filed in term time, add the day of the term to the day of the month, as in the next form.)

A. B. {
agt.
C. D. }

And afterward, to-wit: on theday of.....A. D. 187.., it being the....day of the....term of the said court, the said A. B. (or plaintiff) filed the following demurrer to the answer of the said C. D. (or of the said defendant), to-wit:

(Here insert demurrer in full.)

(If a party files more than one pleading at the same time, they should be numbered in their legal order, as for instance a demurrer, plea and answer, and the transcript may say....(stating the date)the said C. D. (or defendant) filed his demurrer, plea and answer, which are filed *de bene esse*, or, subject to the rule.)

A. B.
agt.
C. D. }
}

And now, on this . . . day of . . . A. D. 187 . . , it being the . . . day of the said term thereof, this cause coming on for hearing on the plaintiff's demurrer to the defendant's answer (copy the entry of the proceedings of the court, sustaining or overruling the demurrer).

And afterward on the . . . day of the said it being the day of the said term, the said plaintiff filed his replication in the words and figures following, to-wit:

(Here set out replication in full.)

And afterward on the same day the said defendant filed motion and affidavit for a continuance, as follows, to-wit:

(Here set out copy of motion and affidavit.)

And the same being now heard and considered by the court, the said motion is sustained, and it is ordered that this cause be continued until the next term of the court (at the cost of the defendant.)

In the District (or Circuit) Court, County.

A. B. }
agt. }
C. D. }Term A. D., 187..

And now, on this . . . day of . . ., it being the . . . day of said term, this cause coming on for trial, came a jury, to-wit:
and lawful men, who were sworn well and truly to try the issue between the said parties, and a true verdict to render, according to the law and evidence given them in court. The jury retired to consider on their verdict, and afterward, on the same day, the jury returned into court and rendered their verdict, as follows:

(Here insert in full the verdict as rendered.)

(Or if the jury does not return until the next day) —

A. B.
agt.
C. D. }

And now, on this day of....., A. D., 187.., the jury in the foregoing cause returned into court and rendered their verdict, as follows:

(Here insert in full the verdict as rendered.)

A. B.
agt.
C. D. }
}

And afterward, on the.....day of....., A. D. 187.., being the.....day of said term, the plaintiff (or defendant) filed his bill of exceptions in the words and figures following, to-wit:

(Here insert in full the bill of exceptions.)

A. B. }
 agt. }
 C. D. }

Now, on this.....day of....., A. D. 187.., the plaintiff filed his motion for a new trial, to-wit:

(Here insert in full the motion for a new trial.)

A. B. }
 agt. }
 C. D. }

And now, on this.....day of....., A. D. 187.., this cause coming up for a hearing on the motion of the plaintiff for a new trial, it is considered by the court that the same be overruled (or, as the case may be.)

(Then add the final entries of record, comprising final judgment, etc., and certificate of clerk.)

NOTE.—The foregoing form is only an example, and is to be varied according to the circumstances. The actual facts of the case will dictate *what* is to be done, but in all cases it is to be done substantially in *like manner* with the above, giving the proper order and date of the filing of papers and incorporating them at the proper dates into the proceedings of the court.

It will be understood that it is not necessary in all instances to send up the *whole* of the record, but the clerk may be guided by the directions of the appellant under section 3512 of the Code.

SEC. 101. When, by reason of peculiar circumstances, the foregoing rules relating to the abstract, preparation, and argument of causes, ought to be waived or modified in any case, the party desiring such waiver or modification may, upon reasonable notice to the adverse party, apply to any judge of this court in vacation, or to the court in term time, for an order directing the waiver or modification desired. The application shall be in writing, shall set out the peculiar facts relied upon by the applicant, and shall be verified by the party, or a person having knowledge of the facts, and certified by counsel as being true and made in good faith. The order upon such application shall be in writing, and shall be filed with the clerk of this court. In no case will these rules be waived or modified upon agreement of counsel alone.

SEC. 102. The clerk shall make the following distribution of all printed abstracts, briefs, and arguments received under the foregoing rules: one copy to each judge of the court, one copy to the State Library, two copies to the Law Department of the State University, and one shall be filed in his office.

Application
for modifica-
tion of rules.

Printed
abstracts and
arguments:
how distrib-
uted.

IX.—OF THE ADMISSION OF ATTORNEYS.

SEC. 103. The Supreme Court may, on motion, admit any practicing attorney of the District or Circuit Court to practice in lower courts. Practicing attorneys of the District or Circuit Court to practice in lower courts.

Persons who have never been admitted to practice law in the courts of this or any other State, may be admitted by the Supreme Court to practice in all the courts of this State.

Admission on examination. On the application of any such person to be admitted, the court will appoint three or more members of the bar of the Supreme Court to examine such applicant, touching his qualifications. If, from an inspection of the report of said committee, the court shall be satisfied that the applicant possesses the requisite learning and is of good moral character, it will order that he be licensed to practice in all the courts of the State upon taking the oath of office.

Oath. SEC. 104. The form of the oath aforesaid shall be in substance as follows: "You do solemnly swear that you will support the constitution of the United States, and of this State, and that you will faithfully discharge the duty of attorney and counselor of this court, according to the best of your ability." [Code, § 208.]

X.—OF MISCELLANEOUS MATTERS.

Leave to withdraw original papers. SEC. 105. When the original papers in a cause in which final judgment is not rendered in this court are brought into this court upon appeal or writ of error, either party desiring to withdraw the same can have leave to do so on filing a receipt for them with the clerk, and causing a copy to be made of those papers which constitute the record under section 21 hereof, and paying the clerk's fee therefor, which costs shall be taxed to the party failing in this court; and such copy shall be filed by the clerk and kept as a record in the cause. In cases where the costs of such withdrawal have not been charged in the first bill of costs, the clerk is authorized to charge them as costs of increase, and to issue execution therefor.

Docketing and assignment of causes. SEC. 106. The clerk shall docket the causes as the same are filed in his office, and shall arrange and set a proper number for trial for each day of the term, placing together those from the same judicial district, and shall cause notice of the manner he has set such causes to be published and distributed in such manner as the court may direct. No cause shall be docketed unless the abstract required by the rules of this court is filed fifteen days before the first day of the term at which the cause is set down for trial.

Printed docket. SEC. 107. The clerk, immediately after the time expires during which causes may be docketed for trial at a term of court, shall make out and cause to be printed, without delay, the docket for the term, which shall give all causes, whether continuances or appearances, for trial at such term, which shall designate the number, the party appealing, the court and county from which the appeal is brought, the counsel of the parties, the day each cause is assigned for trial, and such other matter for the information of the court and attorneys as may be conveniently given. He shall forward to each justice of the court, to each attorney having causes at the term, and to the clerk of the District and Circuit Courts of each county a copy of said docket.

Clerk to forward papers filed. SEC. 108. The clerk shall, with as little delay as possible, send to each justice of the court a copy of the abstracts, briefs and arguments, and other printed matter filed in each case docketed or set down for trial upon the docket of the term.

ANALYSIS.

VOLUME I.

PART FIRST.

PUBLIC LAW.

TITLE I.

OF THE SOVEREIGNTY AND JURISDICTION OF THE STATE; THE GENERAL ASSEMBLY, AND THE STATUTES.

	Sections
CHAPTER 1. The Sovereignty and Jurisdiction of the State.....	1-4
CHAPTER 2. The General Assembly	5-27
CHAPTER 3. The Statutes	28-45
CHAPTER 4. The Code and its Operation	46-54

TITLE II.

OF THE EXECUTIVE DEPARTMENT.

CHAPTER 1. The Governor	55-60
CHAPTER 2. The Secretary of State.....	61-65
CHAPTER 3. The Auditor of State	66-74
CHAPTER 4. The Treasurer of State	75-82
CHAPTER 5. The State Land Office and Register thereof.....	83-93
CHAPTER 6. The State Printer.....	94-105
CHAPTER 7. The State Binder	106-110
CHAPTER 8. The Executive Council.....	111-120
CHAPTER 9. Duties assigned to two or more officers jointly, and General Regulations.....	121-132

TITLE III.

OF THE JUDICIAL DEPARTMENT.

CHAPTER 1. The Organization of the Supreme Court	133-145
CHAPTER 2. The Clerk of the Supreme Court.....	146-149

(lxv)

	Sections
CHAPTER 3. The Attorney General.....	150-153
CHAPTER 4. The Supreme Court Reporter.....	154-160
CHAPTER 5. The District and Circuit Courts and Judges thereof..	161-186
CHAPTER 6. General Provisions	187-192
CHAPTER 7. The Clerk of the District and Circuit Courts.....	193-204
CHAPTER 8. The District Attorney.....	205-207
CHAPTER 9. Attorneys and Counsellors.....	208-226
CHAPTER 10. Jurors.	227-245
CHAPTER 11. Securities and Investments.....	246-257
CHAPTER 12. Notaries Public	258-266
CHAPTER 13. Commissioners in other States.....	267-276
CHAPTER 14. Administration of oaths.....	277-278

TITLE IV.

OF COUNTY, TOWNSHIP, TOWN, AND CITY GOVERNMENT.

CHAPTER 1. Of Counties.....	279-293
CHAPTER 2. The Board of Supervisors.....	294-319
CHAPTER 3. The County Auditor.....	320-326
CHAPTER 4. The County Treasurer.....	327-334
CHAPTER 5. The County Recorder.....	335-336
CHAPTER 6. The Sheriff.....	337-348
CHAPTER 7. The Coroner.....	349-368
CHAPTER 8. The County Surveyor.....	369-378
CHAPTER 9. Of Townships and Township Officers.....	379-420
CHAPTER 10. Of Cities and Incorporated Towns.....	421-551
CHAPTER 11. General Regulations affecting Counties, Cities, and Towns.....	552-558
CHAPTER 12. Of Plats.....	559-572

TITLE V.

OF ELECTIONS AND OFFICERS.

CHAPTER 1. The Election of Officers and their Terms.....	573-593
CHAPTER 2. The Registration of Voters.....	594-602
CHAPTER 3. The General Election.....	603-658
CHAPTER 4. Of Electors of President and Vice-President.....	659-669
CHAPTER 5. Of Qualification for Office.....	670-691
CHAPTER 6. Of Contesting Elections.....	692-745
CHAPTER 7. Of Removal and Suspension from Office.....	746-765
CHAPTER 8. Of Deputies.....	766-771
CHAPTER 9. Of Additional Security and Discharge of Sureties..	772-780
CHAPTER 10. Of Vacancies and Special Elections.....	781-795

TITLE VI.**OF REVENUE.**

	Sections
CHAPTER 1. The Assessment of Taxes.....	796-853
CHAPTER 2. The Collection of Taxes.....	854-907
CHAPTER 3. Provisions for the Security of the Revenue.....	908-919

TITLE VII.**HIGHWAYS, FERRIES, AND BRIDGES.**

CHAPTER 1. Of Establishing Highways.....	920-968
CHAPTER 2. Of Working Highways.....	969-1000
CHAPTER 3. Of Ferries and Bridges.....	1001-1037

TITLE VIII.

CHAPTER 1. The Militia.....	1038-1057
------------------------------------	-----------

TITLE IX.**OF CORPORATIONS.**

CHAPTER 1. Of Corporations for Pecuniary Profit.....	1058-1090
CHAPTER 2. Of Corporations other than those for Pecuniary Profit.....	1091-1102
CHAPTER 3. Of State and County Agricultural and Horticultural Societies.....	1103-1121
CHAPTER 4. Of Insurance Companies.....	1122-1160
CHAPTER 5. Of Life Insurance Companies.....	1161-1183
CHAPTER 6. Of Mutual Building Associations.....	1184-1187
Of Savings Banks.....	p. 311

TITLE X.**OF INTERNAL IMPROVEMENTS.**

CHAPTER 1. Of Mill-Dams and Races.....	1188-1206
CHAPTER 2. Of Drains, Ditches, and Water Courses.....	1207-1235
CHAPTER 3. Of Water-Power Improvements.....	1236-1240
CHAPTER 4. Of Taking Private Property for Works of Internal Improvement.....	1241-1272
CHAPTER 5. Of Railways.....	1273-1323
CHAPTER 6. Of Telegraphs.....	1324-1329

TITLE XI.**OF THE POLICE OF THE STATE.**

CHAPTER 1. The Settlement and Support of the Poor.....	1330-1382
CHAPTER 2. The Care of the Insane.....	1383-1445

		Sections
CHAPTER	3. Of Domestic and Other Animals.....	1446-1488
	Care and Propagation of Fish.....	p. 409
CHAPTER	4. Of Fences.....	1489-1508
CHAPTER	5. Of Lost Goods.....	1509-1522
CHAPTER	6. Of Intoxicating Liquors.....	1523-1559
CHAPTER	7. Of Fire Companies	1560-1566
CHAPTER	8. Of Inspection of Coal Mines.....	1567-1569
	Regulation of the Sale of Coal Oil.....	p. 447
	Regulation of the Practice of Pharmacy.....	p. 448
	The State Board of Health	p. 451
CHAPTER	9. Of Quarterly Bank Statements.....	1570-1576
	Of Fraudulent Banking	p. 458

TITLE XII.

OF EDUCATION.

CHAPTER	1. The Superintendent of Public Instruction.....	1577-1584
CHAPTER	2. The State University.....	1585-1603
CHAPTER	3. The State Agricultural College and Farm.....	1604-1622
CHAPTER	4. The Soldiers' Orphans' Homes.....	1623-1642
	Asylum for Feeble Minded Children.....	p. 473
CHAPTER	5. The State Reform School.....	1643-1663
CHAPTER	6. The College for the Blind.....	1664-1684
CHAPTER	7. The Institution for the Deaf and Dumb.....	1685-1696
	The State Normal School.....	p. 485
CHAPTER	8. Of County High Schools.....	1697-1712
CHAPTER	9. The System of Common Schools.....	1713-1824
CHAPTER	10. Of School-House Sites.....	1825-1828
CHAPTER	11. Of Appeals.....	1829-1836
CHAPTER	12. The School Fund.....	1837-1884
CHAPTER	13. The State Library.....	1885-1899
CHAPTER	14. The State Historical Society.....	1900-1907

PART SECOND.

PRIVATE LAW,

TITLE XIII.

OF RIGHTS OF PROPERTY.

CHAPTER	1. Of Rights of Aliens.....	1908-1909
CHAPTER	2. Of Title in State or County.....	1910-1919

	Sections.
CHAPTER 3. Of Perpetuities and Land in Mortmain.....	1920-1921
CHAPTER 4. The Transfer of Personal Property.....	1922-1927
CHAPTER 5. Of Real Property.....	1928-1940
CHAPTER 6. The Conveyance of Real Property.....	1941-1975
CHAPTER 7. Of Occupying Claimants.....	1976-1987
CHAPTER 8. The Homestead.....	1988-2010
CHAPTER 9. Of Landlord and Tenant.....	2011-2018
CHAPTER 10. Of Walls in Common.....	2019-2030
CHAPTER 11. Of Easements in Real Estate.....	2031-2036

TITLE XIV.**OF TRADE AND COMMERCE.**

CHAPTER 1. Of Weights, Measures, and Inspection.....	2037-2074
CHAPTER 2. Money of Account and Interest.....	2075-2081
CHAPTER 3. Of Notes and Bills.....	2082-2103
CHAPTER 4. Of Tender.....	2104-2107
CHAPTER 5. Of Sureties	2108-2111
CHAPTER 6. Of Private Seals.....	2112-2114
CHAPTER 7. Of Assignments for Creditors.....	2115-2128
CHAPTER 8. Of Mechanics' Liens.....	2129-2146
CHAPTER 9. Of Limited Partnership.....	2147-2170
CHAPTER 10. Of Warehousemen and Carriers.....	2171-2184

TITLE XV.**OF THE DOMESTIC RELATIONS.**

CHAPTER 1. Of Marriage	2185-2201
CHAPTER 2. Of Husband and Wife.....	2202-2219
CHAPTER 3. Of Divorce, Annulling Marriages and Alimony...	2220-2236
CHAPTER 4. Of Minors	2237-2240
CHAPTER 5. The Guardianship of Minors, Drunkards, Spend-thrifts and Lunatics.....	2241-2279
CHAPTER 6. Of Master and Apprentice.....	2280-2306
CHAPTER 7. The Adoption of Children.....	2307-2311

TITLE XVI.**OF THE ESTATES OF DECEDENTS.**

CHAPTER 1. Of Probate Jurisdiction.....	2312-2321
CHAPTER 2. Of Wills and Letters of Administration.....	2322-2369
CHAPTER 3. The Settlement of the Estate.....	2370-2435
CHAPTER 4. The Descent and Distribution of Intestate Property	2436-2468
CHAPTER 5. Of Accounting and other Provisions.....	2469-2503

VOLUME II.

PART THIRD.

CODE OF CIVIL PRACTICE

TITLE XVII.

OF PROCEDURE IN COURTS OF ORIGINAL JURISDICTION.

	Sections
CHAPTER 1. Preliminary Provisions	2504-2528
CHAPTER 2. Of Limitation of Actions	2529-2542
CHAPTER 3. Of Parties to an Action.....	2543-2575
CHAPTER 4. Of Place of Bringing Suit.....	2576-2589
CHAPTER 5. Of Change in Place of Trial.....	2590-2598
CHAPTER 6. Of Manner of Commencing Actions.....	2599-2629
CHAPTER 7. Of Joinder of Actions.....	2630-2634
CHAPTER 8. Of Pleading.....	2635-2736
CHAPTER 9. Of Trial and Judgment.	2737-2893
CHAPTER 10. Of Judgment by Confession.....	2894-2899
CHAPTER 11. Of Offer to Compromise....	2900-2902
CHAPTER 12. Of Receivers	2903-2905
CHAPTER 13. Of Summary Proceedings.....	2906-2910
CHAPTER 14. Of Motions and Orders.....	2911-2926
CHAPTER 15. Of Security for Costs	2927-2932
CHAPTER 16. Of Costs	2933-2948

TITLE XVIII.

OF ATTACHMENTS, EXECUTIONS, AND SUPPLEMENTARY PROCEEDINGS.

CHAPTER 1. Of Attachments and Garnishment.....	2949-3024
CHAPTER 2. Of Executions	3025-3114
CHAPTER 3. Of Proceedings Auxiliary to Execution.....	3115-3153

TITLE XIX.

OF PROCEEDINGS TO REVERSE, VACATE OR MODIFY JUDGMENTS OR PROCEEDINGS OR BOARDS OR INDIVIDUALS ACTING JUDICIALLY.

CHAPTER 1. Of Proceedings to Reverse, Vacate or Modify Judgments in Courts in which Rendered.....	3154-3162
CHAPTER 2. Of Appellate Proceedings in the Supreme Court..	3163-3215
CHAPTER 3. Of Certiorari.....	3216-3224

TITLE XX.**OF PROCEDURE IN PARTICULAR CASES.**

	Sections
CHAPTER 1. Of Actions to Recover Specific Personal Property	3225-3244
CHAPTER 2. Of Actions for the Recovery of Real Property.....	3245-3276
CHAPTER 3. Of Partition.....	3277-3306
CHAPTER 4. Of Foreclosure of Mortgages.....	3307-3330
CHAPTER 5. Of Actions for Nuisance, Waste and Trespass...	3331-3344
CHAPTER 6. Of Actions to Test Official and Corporate Rights..	3345-3367
CHAPTER 7. Of Actions on Official Securities, and Fines and Forfeitures.....	3368-3372
CHAPTER 8. Of Actions of Mandamus.....	3373-3385
CHAPTER 9. Of Injunctions.....	3386-3407
CHAPTER 10. Of Submitting Controversies without Action or in Action.....	3408-3415
CHAPTER 11. Of Arbitration	3416-3431
CHAPTER 12. Of Actions Against Boats or Rafts.....	3432-3448
CHAPTER 13. Of Habeas Corpus.....	3449-3490
CHAPTER 14. Of Contempts.....	3491-3501
CHAPTER 15. Of Changing Names.....	3502-3506

TITLE XXI.

CHAPTER 1. Of Justices of the Peace and their Courts.....	3507-3635
--	-----------

TITLE XXII.

CHAPTER 1. Of General Principles of Evidence.....	3636-3754
--	-----------

TITLE XXIII.**OF COMPENSATION OF OFFICERS.**

CHAPTER 1. Of State and District Officers.....	3755-3780
CHAPTER 2. Of County and Township Officers.....	3781-3810
CHAPTER 3. Of Witnesses, Jurors, and Special Cases.....	3811-3844

PART FOURTH.**CODE OF CRIMINAL PRACTICE.****TITLE XXIV.****OF CRIMES AND PUNISHMENTS.**

CHAPTER 1. Offenses Against the Sovereignty of the State...	3845-3847
CHAPTER 2. Offenses Against the Lives and Persons of Individ- uals.....	3848-3879

	Sections
CHAPTER 3. Offenses Against Property.....	3880-3901
CHAPTER 4. Larceny and Receiving Stolen Goods.....	3902-3916
CHAPTER 5. Forgery and Counterfeiting.....	3917-3935
CHAPTER 6. Offenses Against Public Justice.....	3936-3976
CHAPTER 7. Malicious Mischief and Trespass on Property.....	3977-3992
CHAPTER 8. Offenses Against the Right of Suffrage.....	3993-4007
CHAPTER 9. Offenses Against Chastity, Morality and Decency..	4008-4034
CHAPTER 10. Offenses Against Public Health.....	4035-4042
CHAPTER 11. Offenses Against Public Policy.....	4043-4061
CHAPTER 12. Offenses Against the Public Peace.....	4065-4072
CHAPTER 13. Cheating by False Pretenses, Gross Frauds and Conspiracy.....	4073-4088
CHAPTER 14. Nuisances and Abatement thereof.....	4089-4096
CHAPTER 15. Of Libel	4097-4103

TITLE XXV.

OF CRIMINAL PROCEDURE.

CHAPTER 1. Of Public Offenses.....	4103-4107
CHAPTER 2. Of the term Magistrate and his Powers, Peace Officers and Officers of Justice, and Complaints..	4108-4111
CHAPTER 3. Of the Prevention of Public Offenses by the Resist- ance of the Party about to be Injured and Others,	4112-4114
CHAPTER 4. Of Security to Keep the Peace.....	4115-4129
CHAPTER 5. Of Vagrants	4130-4144
CHAPTER 6. Of Resistance to Process and Suppression of Riots,	4145-4154
CHAPTER 7. Of Local Jurisdiction of Public Offenses	4155-4164
CHAPTER 8. Of Time of Commencing Criminal Actions	4165-4170
CHAPTER 9. Of Fugitives from Justice	4171-4184
CHAPTER 10. Of Warrant of Arrest on Preliminary Information.	4185-4196
CHAPTER 11. Of Arrest, and by whom and how made.....	4197-4225
CHAPTER 12. Of Preliminary Examinations.....	4226-4254
CHAPTER 13. Of Selecting, Drawing, Summoning, and Empanel- ling of the Grand Jury.....	4255-4271
CHAPTER 14. Of the Powers and Duties of the Grand Jury.....	4272-4290
CHAPTER 15. Of the Finding and Presentment of Indictment ..	4291-4294
CHAPTER 16. Of Indictment, its Form and Requisites.....	4295-4317
CHAPTER 17. Of Process upon an Indictment.....	4318-4326
CHAPTER 18. Of the Arraignment of the Defendant	4327-4336
CHAPTER 19. Of Setting aside the Indictment.....	4337-4344
CHAPTER 20. Of Pleading by the Defendant	4345-4346
CHAPTER 21. Of the Mode of Trial.....	4347-4351
CHAPTER 22. Of Demurrer	4352-4358
CHAPTER 23. Of Pleas to the Indictment.....	4359-4367

	Sections
CHAPTER 24. Of Change of Venue.....	4368-4388
CHAPTER 25. Of the Formation of Trial Jury.....	4389-4397
CHAPTER 26. Of Challenging the Jury.....	4398-4418
CHAPTER 27. Of the Trial of an Issue of Fact in an Indictment.	4419-4451
CHAPTER 28. Of the Conduct of the Jury after Cause is Submitted	4452-4459
CHAPTER 29. Of the Verdict.....	4460-4478
CHAPTER 30. Of Bills of Exceptions.....	4479-4486
CHAPTER 31. Of New Trial.....	4487-4490
CHAPTER 32. Of Arrest of Judgment.....	4491-4494
CHAPTER 33. Of Judgment.....	4495-4511
CHAPTER 34. Of Execution.....	4512-4519
CHAPTER 35. Of Appeals.....	4520-4545
CHAPTER 36. Of Impeachment.....	4546-4555
CHAPTER 37. Of Evidence.....	4556-4572
CHAPTER 38. Of Bail before Indictment.....	4573-4581
CHAPTER 39. Of Bail upon Indictment and before Conviction ..	4582-4586
CHAPTER 40. Of Bail upon Appeal.....	4587-4588
CHAPTER 41. Of Deposit of Money instead of Bail.....	4589-4592
CHAPTER 42. Of Surrender of the Defendant.....	4593-4595
CHAPTER 43. Of Forfeiture of Bail.....	4596-4600
CHAPTER 44. Of Re-commitment of Defendant after giving Bail.	4601-4605
CHAPTER 45. Of Undertakings of Bail; when Liens.....	4606-4608
CHAPTER 46. Of Judgments; when Liens, and Stay of Execution on	4609-4610
CHAPTER 47. Of Liberation of Poor Convicts.....	4611-4612
CHAPTER 48. Of Dismissal of Criminal Actions before and after Indictment for Want of Prosecution or otherwise	4613-4619
CHAPTER 49. Of the Insanity of Defendant before Trial or after Conviction.....	4620-4628
CHAPTER 50. Of Search Warrants and Proceedings therein....	4629-4653
CHAPTER 51. Of the Disposal of Property Stolen or Embezzled.	4654-4659
CHAPTER 52. Of Proceedings and Trials before Justices of the Peace.....	4660-4706
CHAPTER 53. Of Proceedings before Police and City Courts....	4707—
CHAPTER 54. Of Compromising Certain Offenses.....	4708-4711
CHAPTER 55. Of Pardons and Remissions of Fines.....	4712-4714
CHAPTER 56. Of Illegitimate Children	4715-4722

TITLE XXVI.

OF IMPRISONMENT AND THE GOVERNMENT OF PRISONS AND THE PENITEN-
TIARY, ITS GOVERNMENT AND DISCIPLINE.

CHAPTER 1. Of Imprisonment for Public Offenses, and the Discipline of Prisons	4723-4743
CHAPTER 2. Of the Penitentiary of the State and Government and Discipline thereof.....	4744-4806

ABBREVIATIONS.

- R. S., Revised Statutes of 1843.
C '51, Code of 1851.
C '73, Code of 1873, usually referred to merely as "Code."
T., Title in Code of 1873. (See, also, below, "June T.")
¶, Paragraph, used to indicate the numbered subdivisions of sections of the Code.
PAR., Paragraph, is used as a heading in the notes to sections consisting of numbered subdivisions, and the number following it indicates the subdivision of the section to which the notes apply.
G. A., General Assembly.
Ex. S., Extra Session.
Ch., Chapter.
§, Section; when not otherwise indicated, the reference is to the Code of 1873.
[], Words enclosed in brackets are inserted in the session laws, as in the editions thereof printed by the state, to supply evident omissions; and words evidently erroneous or superfluous are printed in *italics*.
S. C., same case.
Mor., Morris's Report.
Gr., G. Greene's Reports.
—, indicates Iowa Reports, the number of the volume being given preceding, and that of the page following it.
June T., indicate the June and December terms of the Supreme Court, the cases decided Dec. T., at the March and April terms being included with those of the June term, and those decided at the September and October terms being included with those of the December term, as in the reports.
Code Com'r's Rep., Code Commissioners' Report; when the page is given, the reference is to the report made to the Fourteenth General Assembly, printed in pamphlet form; in other cases, the reference is to notes in the bills as reported to the Extra Session of the Fourteenth General Assembly, some copies of which were bound for general distribution, but which are not paged consecutively throughout; the notes may be found, however, under the corresponding section of the title and chapter. The notes contained in the pamphlet edition are nearly all incorporated in the second report.

PART FIRST.

PUBLIC LAW.

TITLE I.

OF THE SOVEREIGNTY AND JURISDICTION OF THE STATE; THE GENERAL ASSEMBLY, AND THE STATUTES.

CHAPTER 1.

OF THE SOVEREIGNTY AND JURISDICTION OF THE STATE.

SECTION 1. The boundaries of the State of Iowa are defined in the preamble of the constitution. Boundaries of the state.
R. § 1.
C. '51, § 1.

SEC. 2. The state possesses sovereignty co-extensive with the boundaries referred to in the preceding section, subject to such rights as may at any time exist in the United States in relation to the public lands, or to any military or naval establishment. Sovereignty.
R. § 2.
C. '51, § 2.

SEC. 3. The state has concurrent jurisdiction on the waters of any river or lake which forms a common boundary between this and any other state. Concurrent jurisdiction.
R. § 3.
C. '51, § 3.

This concurrent jurisdiction does not extend to the abatement of a nuisance, or removal of an obstruction, such as a dam, existing in the Mississippi river on the Illinois side of the channel: *Gilbert v. Moline, &c.* Co., 19-319; but the courts of this state have jurisdiction to abate a nuisance and punish a crime committed upon a boat in said river, even though resting upon the shore of an island beyond the middle of the stream. The provisions of R. S. p. 300, ch. 84, held to be still in force: *The State v. Mullen*, 35-199.

SEC. 4. Exclusive jurisdiction over all lands situate in the state now or hereafter purchased by the United States on which buildings for public uses are, or shall be erected, is hereby ceded to the U. S. jurisdiction: exemption from taxation.
R. §§ 2197, 2198.

United States, and the same shall be exempt from taxation so long as the same are owned by the United States. Nothing in this section shall be so construed as to prevent on such lands the service of any judicial process issued from or returnable to any court of this state or judge thereof, or to prevent such courts from exercising jurisdiction of crimes committed thereon.

CHAPTER 2.

OF THE GENERAL ASSEMBLY.

[See Const., Art. 3.]

Sessions of
R. § 13.
C. § 1.

Temporary or-
ganization.
R. § 14.
C. § 5.

Certificates of
election.
R. § 15.
C. § 6.

Election of
temporary offi-
cers.
R. § 4.
C. § 7.

Permanent or-
ganization.
R. § 5.
C. § 8.

Members may
administer
oaths.
R. § 7.
C. § 10.

Freedom of
speech.
R. § 6.
C. § 9.

Compensation
of members,
officers, and
employees.
R. § 18.
C. § 11.

12 G. A. ch. 155.
14 G. A. ch. 118.

SECTION 5. The sessions of the general assembly shall be held at the seat of government, unless the governor shall convene them at some other place in times of pestilence or public danger.

SEC. 6. At two o'clock in the afternoon of the day on which the general assembly shall convene, and at the time of convening of the houses respectively, the president of the senate, or in his absence, some person claiming to be a member, shall call the senate to order, and, if necessary, a temporary president shall be chosen from their own number by the persons claiming to be elected senators. And some person claiming to be elected a member of the house of representatives shall call the house to order, and the persons present claiming to be elected to the senate shall choose a secretary, and those of the house of representatives a clerk for the time being.

SEC. 7. Such secretary and clerk shall receive and file the certificates of election presented, each for his own house, and make a list therefrom of the persons who appear to have been elected members of the respective houses.

SEC. 8. The persons so appearing to be members shall proceed to elect such other officers for the time being as may be requisite; and when so temporarily organized, shall choose a committee of five, who shall examine and report upon the credentials of the persons claiming to be members.

SEC. 9. The members reported by the committee as holding certificates of election from the proper authority, shall proceed to the permanent organization of their respective houses by the election of officers.

SEC. 10. Any member may administer oaths necessary in the course of business of the house of which he is a member, and while acting on a committee upon the business of such committee.

SEC. 11. No member shall be questioned in any other place for any speech or debate in either house.

SEC. 12. The compensation of the members, officers and employees of the general assembly shall be: To every member for each regular session five hundred and fifty dollars, and for each extra session the same compensation per day while in session, to be ascertained by the rate per day of the compensation of the

members of the general assembly at the preceding regular session; and for every mile by the nearest traveled route in going to and returning from the place where the general assembly is held, five cents per mile, but in no case shall the compensation for any extra session exceed six dollars per day exclusive of mileage; to the secretary of the senate and chief clerk of the house, six dollars per day each; to the assistant secretaries of the senate and clerks of the house, five dollars per day each to the enrolling and engrossing clerks, four dollars per day each; to the clerks of committees, two dollars and fifty cents per day each; and the necessary stationery for each of the clerks, secretaries, and their assistants aforesaid; to the sergeant-at-arms, doorkeepers, janitors, post-masters, and mail carriers, three dollars per day each; to the messengers and paper-folders, one dollar and fifty cents per day each. And no other or greater compensation shall be allowed such members, officers, and employees; nor shall there be any allowance of or for stationery, except as above provided, postage, newspapers, or other perquisites, in any form or manner, or under any name or designation.

[A substitute for the original section; 18th G. A., ch. 38.]

[Fifteenth General Assembly, Chapter 3.]

SEC. 1. Within thirty days after the convening of the general assembly, the presiding officers of the two houses shall jointly certify to the auditor of state, the names of the members, officers, and emp'oyes of their respective houses, and the amount of mileage due each member respectively, who shall thereupon draw a warrant upon the state treasurer for the amount due each member for mileage as above certified. He shall also issue to each member of the general assembly, at the end of the said thirty days, a warrant for one-half the salary due each member for the session, and the remaining one-half at the close of the session, and at the close of any extra or adjourned session the compensation of the members shall be paid upon certificate of the presiding officers of each house, showing the number of days of allowance and the compensation as provided by law.

Mode of paying
mileage of
members of
general assem-
bly.

same or salary

SEC. 2. He shall also issue to each officer and employee of the general assembly, upon the certificate of the presiding officer of the house to which such officer or employee belongs, a warrant, from time to time, for the amount due said officer or employee for services rendered.

Payment of of-
ficers and em-
ployees.

SEC. 3. He shall also issue warrants from time to time, to the same postmaster, assistant postmaster, and mail-carrier, upon certificates signed by the president of the senate and the speaker of the house, for the amount due said officers for services rendered.

SEC. 4. Said warrants shall be paid out of any moneys in the treasury not otherwise appropriated.

Payment of
warrants.

SEC. 13. The speaker of the house of representatives shall hold his office until the first day of the meeting of a regular session next after that at which he was elected. All others officers elected by either house shall hold their offices only during the session at which they were elected.

Term of office.
R. § 16.

SEC. 14. Each house has authority to punish as a contempt, by fine and imprisonment, or either of them, the offense of knowingly Contempt.
R. § 8.
C. 61, § 12.

arresting a member in violation of his privilege, of assaulting or threatening to assault a member, or threatening to do any harm to the person or property of a member for anything by him said or done in either house as a member thereof; of attempting by menace or other corrupt means to control or influence a member in giving his vote, or to prevent his giving it; of disorderly or contemptuous conduct tending to disturb its proceedings; of refusal to attend, or be sworn, or be examined as a witness before either house, or a committee when duly summoned; of assaulting or preventing any person going to either house, or its committee by order thereof, knowing the same; of rescuing or attempting to rescue any person arrested by order of either house, knowing of such arrest; or knowingly impeding any officer of either house in the discharge of his duties as such.

Fines and imprisonment.
R. § 10.
C. 51, § 14.

SEC. 15. Fines and imprisonment for contempt shall be only by virtue of an order of the proper house entered on its journals, stating the grounds thereof. Imprisonment shall be effected by a warrant under the hand of the presiding officer for the time being of the house ordering it, countersigned by the acting secretary or clerk, running in the name of the state and directed to the sheriff or jailor of the proper county. Under such warrant, the proper officer will be authorized to commit and detain the person. Fines shall be collected by a similar warrant directed to any proper officer of any county in which the offender has property, and executed in the same manner as executions for fines issued from courts of record, and the proceeds paid into the state treasury.

Same.
R. §§ 9, 11.
C. 51, §§ 13, 15.

SEC. 16. Imprisonment for contempt shall not extend beyond the session at which it is ordered, and shall be in the jail of the county in which the general assembly is then sitting; or if there be no such jail, then in one of the nearest county jails. Punishment for contempt shall not constitute a bar to any other proceeding, civil or criminal for the same act.

May compel attendance of witnesses.
11 G. A. ch. 3, § 21.

SEC. 17. Whenever a committee of either house, or a joint committee of both, is charged with an investigation requiring the personal attendance of witnesses, any person may be compelled to appear before such committee as a witness by serving upon him, in the same manner a subpoena is required to be served in a civil action in the district court, an order, naming the time and place he is required to appear, signed by the presiding officer of the house appointing the committee, and attested by its acting secretary or clerk; or, in case of a joint committee, signed and attested by such officers of either house.

Compensation of witnesses.
Same, § 2.

SEC. 18. Witnesses shall be entitled to the same compensation for attendance under the preceding section as before the district court, but shall not have the right to demand payment of their fees in advance.

Joint conventions.
R. § 674, 675.

SEC. 19. Joint conventions of the general assembly shall meet in the hall of the house of representatives for such purposes as are or shall be provided by law. The president of the senate, or, in his absence, the speaker of the house of representatives shall preside, or, in the absence of both, a temporary president shall be appointed by a joint vote.

Tellers.
R. § 676.

SEC. 20. After the time for the meeting of the joint convention has been designated and prior thereto, each house shall appoint one teller, and the two shall act as judges of the election.

SEC. 21. The clerk of the house of representatives shall act as secretary of the convention, and he and the secretary of the senate shall keep a fair and correct record of the proceedings of the convention, which shall be entered on the journals of each house.

SEC. 22. When any officer is to be elected by joint convention, the names of the members shall be arranged in alphabetical order by the secretaries, and each member shall vote in the order in which his name stands when thus arranged. The name of the person voted for, and of the members voting, shall be entered in writing by the tellers, who, after the secretary shall have called the names of the members a second time, and the name of the person for whom each member has voted, shall report to the president of the convention the number of votes given for each candidate.

SEC. 23. If no person shall receive the votes of a majority of the members present, a second poll may be taken, and so on from time to time until some person receives such majority.

SEC. 24. If the purpose for which the joint convention assembled is not concluded, the president shall adjourn the same from time to time as the members present may determine.

SEC. 25. When any person shall have received a majority of the votes as aforesaid, the president shall declare him to be elected, and shall, in the presence of the convention, sign two certificates of such election, attested by the tellers, one of which he shall transmit to the governor, and the other shall be preserved among the records of the convention and entered at length on the journals of each house. The governor shall issue a commission to the person so elected.

SEC. 26. Joint conventions for the purpose of electing a senator in the congress of the United States, and canvassing the votes for governor and lieutenant-governor, shall be conducted according to the foregoing provisions so far as applicable.

SEC. 27. In the absence of other rules, those of parliamentary practice comprised in Cushing's Manual shall govern.

CHAPTER 3.

OF THE STATUTES.

SECTION 28. When the governor approves a bill, he shall set his name thereto with the date of his approval.

As to how the fact of approval may be shown, see note to § 35.

Approval of bills.
R. § 19.
C. '51, § 16.

As to approval by Governor, see Const. Art. 3, § 16.

SEC. 29. When a bill, having passed the general assembly, is returned by the governor with his objections, and is afterward passed as provided in the constitution, a certificate signed by the presiding officer of each house in the following form shall be endorsed thereon or attached thereto: "This bill having been returned by the governor with his objections to the house in which

it originated, and after reconsideration having again passed both houses by yeas and nays by a majority of two-thirds of the members of each house, has become a law this — day of —.”

See Const. Art. 3, § 16.

Bill retained by governor more than three days. SEC. 30. When a bill has passed the general assembly, and is not returned by the governor within three days as provided in the constitution, it shall be authenticated by the secretary of state endorsing thereon: “This bill having remained with the governor three days (Sunday excepted), the general assembly being in session, has become a law this — day of —, Secretary of State.”

See Const. Art. 3, § 16.

Original acts deposited. SEC. 31. The original acts of the general assembly shall be deposited with and kept by the secretary of state.

The original act thus deposited with the secretary of state is the ultimate proof of the statute, whatever errors there may be in the printed copies thereof; and the court will inform itself and take cognizance of the true reading as thus shown: *Clare v. The State*, 5-509; commented up-
on in *The State v. Donehey*, 8-306. The acts thus deposited are the bills which receive the signatures of the officers, &c., and behind them it is impossible for any court to go for the purpose of ascertaining what the law is: *Duncombe v. Prindle*, 12-1, 11.

Of private nature. SEC. 32. Acts of a private nature which do not prescribe the time when they take effect, shall do so on the thirtieth day next after they have been approved by the governor, or endorsed as provided in this chapter.

Of public nature: publication. SEC. 33. Acts which are to take effect by publication in newspapers, shall be published in at least two papers, one at least of them at the seat of government, and if such papers are not designated in the act, the same may be designated by the secretary of state, and the act published accordingly. All such acts shall take effect on the twentieth day after the date of the last publication, and the secretary of state shall make and sign on the original roll of each of such acts a certificate, stating in what papers it was published, and the date of the last publication in each of them, which certificate and the printing thereof at the foot of the act shall be presumptive evidence of the facts therein stated.

The provision that “all such acts shall take effect on the twentieth day after the date of the last publication,” applies only to acts in which the time of taking effect is not specified. It does not render it incompetent for the legislature to specify in the act itself when it shall take effect. Where an act provided that it should take effect “from its publication in,” &c., held, that it took effect from the date of such publication: *Hunt v. Murray*, 17-313; but *contra*, see *Thatcher v. Haun*, 12-303.

Certificate of secretary that act was published in one newspaper, held not sufficient: *Welch v. Baitern*, 47-147.

The general assembly may provide that an act shall take effect by publication, and the courts have no power to prevent the injustice which may result therefrom. (Decided under old constitution.) *Pierson v. Baird*, 2 Gr. 235.

See Const. Art. 3, § 26.

Public nature: when in force. SEC. 34. All other acts and resolutions of a public nature passed at regular sessions of the general assembly, shall take effect on the fourth day of July following their passage.

See Const. Art. 3, § 26, and notes.

Laws arranged and prepared for publication. SEC. 35. Within twenty days after the adjournment of the general assembly, the secretary of the state shall prepare a manu-

script or printed copy of all the laws, joint resolutions, and memorials passed thereat, arranging the same in chapters, with marginal notes and index, to which he shall attach his certificate that the acts, resolutions, and memorials therein contained are truly copied from the original rolls, which shall be presumptive evidence of their correctness, and deliver them to the state printer.

[See note to § 40.]

While the statement appended to the printed act that it is "approved" is evidence of that fact, it is not essential to the validity of the act, and

the approval may be shown from the original in the office of the secretary of state: *Dishon v. Smith*, 10-212.

SEC. 36. The acts of each general assembly shall be printed in ^{now published.} pages of the same size, and as near as may be, of the same style, type and appearance with the edition of this code.

[See note to § 40.]

SEC. 37. The secretary of state shall superintend the printing of the laws as above directed. In the absence of any other provision the number of copies to be printed and bound, and the time within which the same shall be completed, may be fixed by resolution of each general assembly, or, in case no such resolution is passed, shall be determined by the executive council.

Secretary of state to superintend publication.

[See note to § 40.]

SEC. 38. Every act passed in amendment of or in addition to any chapter or section of this code, or in amendment of or in addition to any previous act of the same kind, shall contain in the title thereof a reference to the number and name of the chapter so amended or added to, and if such reference be omitted, the secretary of state shall, in preparing such act for publication, supply the omission.

Laws amending code, shall refer to portion amended.

[See note to § 40.]

SEC. 39. The secretary of state shall distribute the laws aforesaid as follows: To the state library for distribution to other states and territories, and for exchange, two hundred copies; two copies to each state institution, to each judge of a court of record, and to each state officer; one copy to each member of the general assembly; ten copies to the library of the law department of the state university; one copy to the state historical society; all of the foregoing to be in law sheep; thirteen thousand copies of the laws bound in boards for distribution to county auditors upon their requisition.

To whom, and number distributed.
Privat laws.
14 G. A. ch. 100
24

[See note to § 40.]

SEC. 40. Each county officer, justice of the peace, township clerk and mayor of a city or incorporated town shall be supplied with a copy of the laws for the use of his office, which shall be delivered to his successor in office. Distribution shall be made upon the requisition of the county auditor upon the secretary of state, which requisition shall state the number of copies required for distribution under the provisions of this section, and also the number of copies requisite for sale in the county, and said requisition shall be made before the first day of March in each year, and thereupon the secretary of state shall forward the number so certified and file with the auditor of state a certificate thereof, which shall be charged to such county by the auditor of state. The

County auditor shall supply.
Same, &c.

County auditor shall make requisition on secretary of state.

County to be credited with number of laws on voucher.

auditor of state shall credit the county with the number of copies distributed under the provisions of the act upon the filing of the proper vouchers by the county auditors, and upon sale of such laws by the county auditor at the rate of fifty cents per copy. The said county auditor shall pay said amounts to the county treasurer of his county, for the use of the state revenue, and the treasurer shall execute duplicate receipts therefor, one of which shall be filed with the auditor of state. The county auditors shall furnish the laws in their respective counties as hereinbefore provided.

[§§ 35 to 40 inclusive are substitutes for the original sections. The originals were repealed by 16th G. A., ch. 132 and substitutes enacted, and §§ 39 and 40 were again repealed by 17th G. A. ch. 123, and the two foregoing sections substituted.]

At what price to be sold.
Same, § 6.

SEC. 41. The secretary of state and county auditor shall sell the copies remaining in their hands at fifty cents a copy. The secretary of state shall report under oath to the auditor of state the number of copies remaining on hand after the distribution aforesaid, and the auditor of state shall charge him therewith and credit him with the proceeds of all that are sold, upon payment of the same into the state treasury. The county auditor shall pay the proceeds of all copies sold by him to the county treasurer, taking his duplicate receipts therefor, one of which he shall transmit to the auditor of state.

Report to be made annually.

SEC. 42. The secretary of state and county auditors shall, on or before the fifteenth day of November in each year, report to the auditor of state the number of copies sold and the number remaining on hand, and the amount paid into the state or county treasury, and the auditor shall charge such state or county treasurer with such amount.

Copies to be delivered to successor.

SEC. 43. When the secretary of state or county auditor goes out of office having any such copies remaining, he shall deliver them to his successor, taking his duplicate receipts therefor, one of which he shall transmit to the auditor of state, who shall thereupon give such officer the proper credit and charge his successor with the copies received by him. Every officer receiving a copy of such laws shall execute a receipt therefor, and shall deliver such copy to his successor, or to the officer from whom he received it, for the use of such successor, and upon failure to do so, shall be liable on his official bond or in his individual capacity.

Compensation for the publication of laws.
11 G. A. ch. 188, § 4.

SEC. 44. The compensation for the publication of laws which are ordered by the general assembly to take effect by publication, unless otherwise fixed, shall be audited and paid by the state. Such compensation shall be one-third the rates of legal advertisements allowed by law.

Construction.
R. § 29.
C. § 1, § 26.

SEC. 45. In the construction of the statutes, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the general assembly or repugnant to the context of the statute :

Repeal of.

1. The repeal of a statute does not revive a statute previously repealed, nor affect any right which has accrued, any duty imposed, any penalty incurred, or any proceeding commenced, under or by virtue of the statute repealed;

The repeal of a statute does not revive a statute previously repealed: *City of Burlington v. Kellar*, 18-59. The repeal of a statute held not to affect the right of redemption from a tax sale made prior to the repeal: *Adams v. Reale*, 19-61; *Myers v. Copeland*, 20-22; nor a widow's dower interest, already vested, though not yet assigned: *Burke v. Barron*, 8-132.

Prior to the death of a testator, his devisees have no rights which are, by this provision, protected against subsequent legislation: *Lorieux v. Kelter*, 5-196.

Where the times of holding terms of court were changed by statute, held, that such change did not affect a cause already commenced by service of notice, and that defendant should be held to appear at the "next term," as so changed: *Peoria M. & F. Ins. Co. v. Dickerson*, 23-274.

Where, after an indictment was

found, the law prescribing the punishment for the offense therein charged, was changed, so that the offense was no longer triable on indictment, but only on information, held, that the prosecution under the indictment was not affected by the change (overruling *The State v. Burlick*, 9-402); *The State v. Shaffer*, 21-486.

17 G. A. ch. 145, as to method of trial in equity cases upon appeal, etc., repealing § 274, held, not to apply to an appeal taken after the act took effect from a judgment rendered before that time: *Sinondson v. Simondson*, 50-110; *Trebon v. Zuraff*, id., 180; nor to an appeal in an action commenced, but not brought to judgment before the act took effect: *Schmelz v. Schmelz*, 52-512.

As to the effect of the Code of 1873 upon prior laws, etc., see § 50 and notes.

2. Words and phrases shall be construed according to the context and the approved usage of the language ; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, shall be construed according to such meaning ;

3. Words importing the singular number may be extended to several persons or things, and words importing the plural number may be applied to one person or thing, and words importing the masculine gender only may be extended to females ;

4. Words giving a joint authority to three or more public officers or other persons, shall be construed as giving such authority to a majority of them, unless it be otherwise expressed in the act giving the authority;

5. The words "highway" and "road" include public bridges and may be held equivalent to the words "county way," "county road," "common road," and "state road;"

6. The words "insane person" include idiots, lunatics, dis- tracted persons and persons of unsound mind ;

7. The word "issue," as applied to descent of estates, includes all lawful lineal descendants ;

8. The word "land," and the phrases "real estate" and "real property," include lands, tenements, hereditaments, and all rights thereto and interests therein, equitable as well as legal ;

The interest which a mortgagee has in the real property mortgaged, constitutes "real estate :" *Severin v. Cole*, 38-43; and also the equitable interest which the heir of such mortgagee has in such property: *Burton v. Hintrager*, 18-348.

9. The words "personal property" include money, goods, chattels, evidences of debt, and things in action;

Words and
phrases.

Insane.

Issue.

Real property.

The making improvements upon land by one in possession under contract of purchase, gives him an equitable interest which will pass by a conveyance : *White v. Butt*, 32-335.

	A promissory note is "personal property: " <i>Allison v. King</i> , 21-302; so are municipal bonds: <i>Callanan v. Brown</i> , 31-333; and so is a draft, though it be against the government, and upon which action could not therefore, be brought, and though	it has not been endorsed by the p'ye'e; so held, in case of embezzlement (§ 1909); <i>The State v. Orwig</i> , 24-102. Applied, <i>Iowa Lumber Co. v. Foster</i> , 49-25.
Property.	10. The word "property" includes personal and real property;	
Month, year, A. D.	11. The word "month" means a calendar month, and the word "year," and the abbreviation "A. D.," are equivalent to the expression "year of our Lord;"	
Oath, affirmation.	12. The word "oath" includes affirmation in all cases where an affirmation may be substituted for an oath, and in like cases the word "swear," includes "affirm;"	
Person, corporation.	13. The word "person" may be extended to bodies corporate;	
Seal.	So held, under the statute as to garnishment: <i>Wales v. City of Mus-</i>	<i>catine</i> , 4-302, 307.
State, territory.	14. Where the seal of a court or public office or officer may be required to be affixed to any paper, the word "seal" shall include an impression upon the paper alone as well as upon wax or a wafer affixed thereto;	
Town, cities, villages.	15. The word "state," when applied to the different parts of the United States, includes the District of Columbia and the territories, and the words "United States" may include the said district and territories;	
Will.	16. The word "town" may include cities as well as incorporated villages;	
In writing.	"Town" does not include unincorporated village; so held, in constr-	ing statute as to extent of homestead: <i>Truax v. Pool</i> , 46-256.
Sheriff.	17. The word "will" includes codicils;	
Deed, bond, In- dentity, under- taking.	18. The words "written" and "in writing," may include printing, engraving, lithography, or any other mode of representing words and letters, excepting those cases where the written signature or mark of any person is required;	
Executor.	19. The term "sheriff" may be extended to any person performing the duties of the sheriff either generally or in special cases;	
Numerals and figures.	This does not authorize a person other than the sheriff to serve notices, | levy executions, &c.: <i>Conway v. McG. & M. R. R. Co.</i> , 43-32.	
	20. The word "deed" is applied to an instrument conveying lands, but does not imply a sealed instrument; and the words "bond" and "indenture" do not necessarily imply a seal, and the word "undertaking" means a promise or security in any form;	
	A seal is not therefore essential to the validity of a conveyance: <i>Pierson v. Armstrong</i> , 1-282, though it for-| merly was so: <i>Switzer v. Knapps</i> , 10-72; <i>Sinnes v. Hervey</i> , 19-273, 290.	
	21. The term "executor" includes administrator, where the subject matter applies to an administrator;	
	22. The Roman numerals and Arabic figures are to be taken as a part of the English language;	

23. In computing time, the first day shall be excluded and the Computing time last included, unless the last falls on Sunday, in which case the R. § 4121. time prescribed shall be extended so as to include the whole of C. '51, § 2513. the following Monday;

See *Richardson v. B. & M. R. R.* | and *Manning v. Irish*, 47-650. Co., 8-260; *Teucher v. Hiatt*, 23-527;

24. Degrees of consanguinity and affinity shall be computed Consangu. R. § 4124. according to the civil law;

25. The word "clerk" means clerk of the court in which the Clerk. R. § 4123. action or proceeding is brought or is pending; and the words "clerk's office" mean his office.

CHAPTER 4.

OF THE CODE AND ITS OPERATION.

SECTION 46. In the citation of the statutes, this shall not be This code. reckoned as one of the statutes of the present political year, but C. '51, § 27. it may be designated as the "CODE," adding as may be necessary the title, chapter, or section.

SEC. 47. All public and general statutes passed prior to the Repeal of prior present session of the general assembly, and all public and special statutes. acts the subjects whereof are revised in this code or which are C. '51, § 28. repugnant to the provisions thereof, are hereby repealed, subject to the limitations and with the exceptions herein expressed.

The provisions of the Revision and | and special acts" and not revised in session laws prior to the Code in refer- the Code, held not to be repealed ence to swamp lands being "public thereby: *Gray v. Mount*, 45-591.

SEC. 48. Local acts are not repealed unless it be herein so Local statutes. expressed, or unless the provisions of this code are repugnant C. '51, § 29. thereto.

SEC. 49. This code shall take effect on the first day of Septem- When code takes effect. ber, A. D. 1873, until which time existing statutes continue in R. § 49. force, and nothing contained in this title in relation to the prepar- C. '51, § 30. ation and publication of the statutes shall be construed as including this code.

SEC. 50. This repeal of existing statutes shall not affect any Existing rights act done, any right accruing or which has accrued or been estab- not affected. R. § 34. lished, nor any suit or proceeding had or commenced in any civil C. '51, §§ 31, cause before the time when such repeal takes effect; but the 2514. proceedings in such cases shall be conformed to the provisions of this code as far as consistent.

The general assembly cannot alter, change or repeal statutes relating to the remedy so as to substantially impair a vested right; therefore, where a mortgage and a mechanic's lien upon the same property attached un- der the Revision, held, in an action brought under the Code, that the mortgagor had a right to have his lien determined and enforced, as against the holder of the mechanic's lien, in accordance with the provisions

of the Revision: *Brodt v. Rohkar*, 48-36.

A change made by the Code in the law as to the liability of railroad companies for injuries in certain cases, held, not to apply in a case where the injury was received before the Code took effect: *Payne v. C. R. I. & P. R. Co.*, 44-236.

A judgment being rendered before the taking effect of the Code, against the husband, under which certain property of the wife, being in his possession, was liable, as the law then stood; held, that such property might still be taken upon execution issued after the taking effect of the Code, although by its provisions the property of the wife would not have been liable under similar circumstances: *Schmidt v. Holtz*, 44-446.

The law in force at the time of the rendition of a judgment should govern as to a sale made thereunder: *Fonda v. Clark*, 43-300; *Babcock v. Gurney*, 42-154; also as to the right to appraisal: *Holland v. Dicker-son*, 41-367; also as to stay of execution: *DuBois v. Bloom*, 38-512; also, as to right of appeal: *City of Davenport v. D. & St. P. R. Co.* 37-624.

Where an original notice was served before the taking effect of the Code, but the second day of the next term occurred after that time, held, that the provisions of the Code would govern the time of pleading: *Brotherton v. Brotherton*, 41-112.

The right of a party to a trial by

Same.
R. § 36.
C. '51, § 32.

Suits or prosecutions pending
R. § 36.
C. '51, § 33.

Heretofore and hereafter.
R. § 38.
C. '51, § 35.

Acts in conflict with code.
R. § 39.
C. '51, § 36.

SEC. 51. No offense committed, and no penalty or forfeiture incurred under any statute hereby repealed and before the repeal takes effect, shall be affected by the repeal, except that when a punishment, penalty, or forfeiture is mitigated by the provisions herein contained, such provisions shall be applied to a judgment to be pronounced after the repeal.

As to the effect of the enactment of the Code upon penalties on delinquent taxes, see *C. R. & M. R. R. Co. v. Carroll Co.*, 41-153, 190.

SEC. 52. No suit or prosecution pending when this repeal takes effect, for an offense committed, or for the recovery of a penalty or forfeiture incurred, shall be affected by the repeal, but the proceedings may be conformed to the provisions of this code as far as consistent.

SEC. 53. The terms "heretofore" and "hereafter," as used in this Code, have relation to the time when this statute takes effect.

See *Bennett v. Bevard*, 6-82; and *City of Davenport v. D. & St. P. R. Co.*, 37-624.

SEC. 54. Whenever an act of a general nature passed at the present session of the general assembly, separate from this code, conflicts with or contravenes any of the provisions thereof, the provisions of the code shall prevail.

jury, in an action commenced prior to the taking effect of the Code, held, not to be affected by any change made by the Code: *Wormley v. Hamburg*, 46-144. So held, in an action for divorce in which, under the Revision, the parties were entitled to a jury trial: *Wadsworth v. Wadsworth*, 40-448.

An order being made before the Code took effect for a special term of court to be held after that time and that fifteen jurors be called (the proper number under Revision), held, that such order was an "act done" so as to be valid, although the proper number under the Code was twenty-four: *Fifield v. Chick*, 39-651.

As to the effect of the Code upon penalties or taxes delinquent before it took effect, see *C. R. & M. R. R. Co. v. Carroll Co.*, 41-153, 190.

Under Rev. § 4172, held, that proceedings to enforce a judgment should be governed by the law in force when they were commenced and not by that under which the judgment was rendered; a judgment not being "an action": *Gray v. Iliff*, 30-195.

Under a similar provision in the Code of 51, held, that, where an action was brought prior to its adoption, but judgment therein was not rendered until after that time, the defendant's homestead exemption should be governed by the provisions of the law under which the action was commenced: *Helfenstein v. Cave*, 3-257. And see § 45, ¶ 1, and notes.

TITLE II.

OF THE EXECUTIVE DEPARTMENT.

CHAPTER 1.

OF THE GOVERNOR.

SECTION 55. The governor shall keep his office at the seat of government, in which shall be transacted the business of the executive department of the state, and he shall keep a secretary at said office during his absence. Office of; secretary. 10 G. A. ch. 85, § 1.

SEC. 56. He shall cause a journal to be kept in the executive office, in which shall be made an entry of every official act done by him at the time when done. If, in cases of emergency, acts are done elsewhere than in such office, an entry thereof shall be made in the journal as soon thereafter as possible. Journal to be kept. Same, § 2.

SEC. 57. He shall cause a military record to be kept, in which shall be made an entry of every act done by him as commander-in-chief. Military record. Same, § 3.

SEC. 58. Whenever the governor is satisfied that the crime of murder or arson has been committed within the state, and that the person charged therewith has not been arrested or has escaped therefrom, he may, in his discretion, offer a reward not exceeding five hundred dollars for the arrest and delivery to the proper authorities of the person so charged, which reward shall be audited upon the certificate of the governor that the same has been earned, and paid by the state. Reward for criminals. R. § 57.

The board of supervisors has no authority to offer a reward for the arrest of a criminal, but they may for the recovery of funds stolen from the county : *Hawk v. Hamilton Co.*, 48-472. Nor has a city any authority to offer such reward: *Hunger v. City of Des Moines*, 52-193.

SEC. 59. Whenever the governor is satisfied that an action or proceeding has been commenced which may affect the rights or interests of the state, he may employ counsel to protect such rights or interests ; and when any civil action or proceeding has been or is about to be commenced by the proper officer in behalf of the state, he may employ additional counsel to assist in the cause. May employ counsel. R. § 44. C. '51, § 40.

SEC. 60. Expenses incurred under the preceding section and in causing the laws to be executed, may be allowed by the governor and paid from the contingent fund. How paid. R. § 45. C. '51, § 41.

CHAPTER 2.

OF THE SECRETARY OF STATE.

Office; duties.
R. § 59.
C. '51, § 43.

SECTION 61. The secretary of state shall keep his office at the seat of government and perform all duties which may be required of him by law; he shall have charge of and keep all the acts and resolutions of the territorial legislature, and the general assembly of the state, the enroiled copy of the constitutions of the state, and all bonds, books, records, maps, registers, and papers which now are or may hereafter be deposited to be kept in his office.

Commissions countersigned.
R. § 60.
C. '51, § 44.

SEC. 62. All commissions issued by the governor shall be countersigned by the secretary, who shall register each commission in a book to be kept for that purpose, specifying the office, name of officer, date of commission, and tenure of office.

Report to general assembly.
R. § 64.
C. '51, § 48.

SEC. 63. He shall report to the governor, before each regular session of the general assembly, an abstract for each year of the criminal returns received from the clerks of the several district courts, embracing all the facts contained in such returns.

Library of congress.
C. 81.
11 G. A. ch. 81.

SEC. 64. He shall furnish the library of congress two copies of all legislative journals and reports of state officers immediately upon the publication thereof.

Record of cities and towns to be kept.
R. § 1046.

SEC. 65. The secretary of state shall receive and preserve in his office all papers transmitted to him in relation to the incorporation of cities or towns, or the annexation of territory to the same, or the consolidation or the abandonment of municipal corporations, and shall keep an alphabetical list of said cities and towns in a book provided for that purpose, in which shall be entered the name of the town or city, the character of the same, whether town or city, and if a city, whether of first or second class, the county in which situated, and the date of organization.

CHAPTER 3.

OF THE AUDITOR OF STATE.

Powers, duties.
R. § 71.
C. '51, § 50.

SECTION 66. The auditor shall keep his office at the seat of government. He is the general accountant of the state, and it is his duty:

Keep accounts.

1. To keep and state all accounts between the state and the United States or any other state, or any public officer of the state, or person indebted to the state or intrusted with the collection, disbursement, or management of funds belonging to the same, when they are payable to or from the state treasury;

**Make settle-
ments.**

2. To settle the accounts of all county treasurers and receivers of state revenues payable into the state treasury, for each of their official terms separately;

3. To keep fair, clear, and separate accounts of all the revenues, funds, and incomes of the state payable into the state treasury, and of all disbursements and investments thereof, showing the particulars of the same;

4. To settle the accounts of all public debtors for debts due the state treasury, and to require such persons or their legal representatives who have not accounted, to settle their accounts;

5. To settle all claims against the treasury, and when a claim is recognized by law for which no appropriation has been made, to give the claimant a certificate thereof and report the same to the general assembly;

6. To direct and superintend the payment of all money payable into the state treasury, and cause to be instituted and prosecuted the proper actions for the recovery of debts and other moneys so payable;

7. To superintend the fiscal affairs of the state, and secure their management as required by law; to furnish proper instructions, directions, and forms to the county auditors and treasurers, in compliance with which they shall severally keep their accounts relating to the revenue of the state, and perform the duties of their several offices; also forms for the reports required to be made by said officers to such auditor, and of receipts to be given by such treasurers to the tax payers, and such officers shall conform in all respects to the form and directions thus prescribed;

8. To draw warrants on the treasurer for money directed by law to be paid out of the treasury as the same may become payable. Each warrant shall bear on the face thereof its proper number, date, amount, name of payee, and a reference to the law under which it is drawn, which particulars shall be entered in a book kept for that purpose in the order of issuance; and, as soon as practicable after issuing such warrant, he shall certify the above particulars to the treasurer;

The auditor is required to issue treasury to pay them: *The State v. Sherman*, 45-415.
warrants without regard to the fact that there may be no money in the

9. To have the custody of all books, papers, records, documents, vouchers, conveyances, leases, mortgages, bonds and other securities appertaining to the fiscal affairs and property of the state, which are not required to be kept in some other office;

10. To furnish the governor on his requisition, information in writing upon any subject connected with his office, and to suggest to the general assembly, plans for the improvement and management of the public revenue and property;

11. To report to the governor before each regular session of the general assembly, a complete statement of the revenue, funds, income, taxable property, and other resources and property of the state, and of the public revenues and expenditures since his last report, up to the first Monday of November preceding each regular session, with a detailed statement of the expenditures to be defrayed from the treasury for the ensuing two years, specifying each object of expenditure, and distinguishing between such as are provided for by appropriations and such as are not, and showing the probable deficiency of any former appropriations;

Apportion school money.
R. § 1967.
9 G. A. ch.
172, § 98.

12. He shall, on the first Monday of March and September of each year, apportion the interest of the permanent school fund among the several counties in proportion to the number of persons between five and twenty-one years of age, in each, as shown by the last report filed with him by the superintendent of public instruction.

Divide warrants.
R. § 72.
C. '51, § 51.

SEC. 67. When the amount due from the state to any person exceeds twenty dollars, the auditor shall, if requested, divide the amount into parcels of not less than ten dollars and issue warrants therefor.

May require information of persons having property of the state.
R. § 73.
C. '51, § 52.

SEC. 68. The auditor may at any time require any person receiving money, securities, or property belonging to the state, or having the management, disbursement, or other disposition of the same, an account of which is kept in his office, to render statements thereof, and information in reference thereto. Any such person refusing or neglecting to render such statement or information, shall forfeit twenty-five dollars, to be recovered by civil action in the name of the state.

Claims against the state; claimant examined.
R. § 74.
C. '51, § 53.

SEC. 69. Every claim against the state shall be presented to the auditor for settlement within two years after it accrues, and if thereafter presented, the same shall not be audited. When a claim is presented, the auditor is authorized to examine the claimant and any other persons, under oath, touching such claim, or cause them to verify the same by affidavit or deposition.

Neglect to account: penalty for.
R. § 75.
C. '51, § 54.

SEC. 70. If any officer who is accountable to the treasury for any money or property, neglects to render an account to the auditor within the time prescribed by law, or if no time is so prescribed, then, within twenty days after being required so to do by the auditor, the auditor shall state an account against him from the books of the auditor's office, charging ten per cent. damages on the whole sum appearing due, and interest at the rate of six per cent. per annum on the aggregate from the time when the account should have been rendered; all of which may be recovered by an action brought on such account, or on the official bond of such officer.

Failure to pay: penalty for.
R. § 76.
C. '51, § 55.

SEC. 71. If any such officer fails to pay into the treasury the amount received by him within the time prescribed by law, or, having settled with the auditor, fails to pay the amount found due, the auditor shall charge such officer with twenty per cent. damages on the amount due with interest on the aggregate from the time the same became due at the rate of six per cent. per annum, and the whole may be recovered by an action brought on such account, or on the official bond of such officer, and he shall forfeit his commission.

Defense of officer: costs.
R. § 77.
C. '51, § 56.

SEC. 72. The penal provisions in the two preceding sections are subject to any legal defense which the officer may have against the account as stated by the auditor, but judgment for costs shall be rendered against the officer in the action, whatever be its result, unless he rendered an account within the time named in the two preceding sections.

Oath of any receiver of public money before credit given.
R. § 79.
C. '51, § 57.

SEC. 73. When a county treasurer or other receiver of public money, seeks to obtain credit on the books of the auditor's office for payment made to the treasurer, before giving such credit the auditor shall require him to take and subscribe an oath that he has

not used, loaned or appropriated any of the public money for his private benefit, nor for the benefit of any other person.

SEC. 74. In those cases where the auditor is authorized to call upon persons or officers for information, or statements, or accounts, he may issue his requisition therefor in writing to the person or officer called upon, allowing reasonable time, which having been served as a notice in a civil action by the sheriff of the county in which the person or officer called upon resides, and returned to the auditor with the service endorsed thereon, shall be evidence of the making of the requisition therein expressed.

Requisition to
officer to ac-
count.
R. § 79.
C. '51, § 58.

CHAPTER 4.

OF THE TREASURER OF STATE.

SECTION 75. The treasurer shall keep his office at the seat of government, and shall keep an accurate account of the receipts and disbursements at the treasury, in books kept for that purpose, in which he shall specify the names of the persons from whom money is received, and on what account, and the time thereof.

SEC. 76. He shall enter in a book the memorandum of warrants issued as certified to him by the auditor, and receive in payment of public dues the warrants so issued in conformity with law, and redeem the same if there be money in the treasury not otherwise appropriated; and on receiving any such warrant, shall cause the person presenting it to endorse it, and shall write on the face thereof "redeemed," and enter in the book containing the auditor's memoranda in appropriate columns, the name of the person to whom paid, date of payment and amount of interest paid.

SEC. 77. When money is paid him the treasurer shall execute receipts in duplicate therefor, stating the fund to which it belongs, one of which must be delivered to the auditor in order to obtain the proper credit, and the treasurer must be charged therewith.

SEC. 78. He shall pay no money from the treasury but upon the warrants of the auditor, and only in the order of their issuance; or if there is no money in the treasury from which such warrant can be paid, he shall, upon request of the holder, indorse upon the warrant the date of its presentation, and sign it, from which time the warrant shall bear interest at the rate of six per cent. per annum, until the time directed in the next section.

SEC. 79. He shall keep a record of the number and amount of the warrants so presented and indorsed for non-payment, and when there are funds in the treasury for their payment to an amount sufficient to render it advisable, he shall give notice to what number of warrants the funds will extend, or the number which he will pay, by three insertions in a newspaper printed at the seat of government; at the expiration of thirty days from the day of the last publication, interest on the warrants so named as being payable, shall cease.

Receipts when
money is paid.
R. § 85.
C. '51, § 61.

Pay warrants in
order of issua-
nce: interest
on.
R. § 86.
C. '51, § 65.
10 G. A. ch. 9.

Record of war-
rants kept
when not paid:
publication as
to such.
R. § 87.
C. '51, § 66.

Certifying and
accounting to
auditor.
R. § 88.
C. 51, § 67.

SEC. 80. Once in each week he shall certify to the auditor the number, date, amount, and payee of each warrant taken up by him, with the date when taken up, and the amount of interest allowed; and on the first Monday of January, April and July, and on the first day of October, annually, he is directed to account with the auditor and deposit in his office all such warrants received at the treasury, and take the auditor's receipt therefor.

[As amended by 17th G. A., ch. 116, changing the dates of accounting with the auditor.]

Report to gov-
ernor.
R. § 89.
C. 51, § 68.

SEC. 81. As soon as practicable after the first Monday of November preceding the regular session of the general assembly, he shall report to the governor the state of the treasury up to that date, exhibiting the amount received and paid out by the treasurer since his last report, and the balance remaining in the treasury.

Provide funds
to pay interest
on state bonds.
10 G. A. ch. 66.

SEC. 82. When interest on any bonds of the state becomes due, the treasurer shall provide funds for the payment thereof on the day and at the place where payable; and persons holding such bonds are required to present the same at such place within ten days from such day. At the expiration of which time, the funds remaining unexpended and vouchers for interest paid shall be returned to the treasury.

RELATING TO THE ESTABLISHMENT OF A STATE DEPOSITORY.

[Seventeenth General Assembly, Chapter 57.]

Treasurer of
State with ad-
vice of execu-
tive council
may designate
bank as deposi-
tory.

Bank so
designated
shall give
security.

Treasurer
may deposit
drafts, &c., in
bank.

And bank
shall collect
same without
delay.

This act not
to release
state or coun-
ty treasurer
from any lia-
bility.

SEC. 1. The treasurer of state, with the advice and approval of the executive council; may designate one or more banks in the city of Des Moines as a depository for the collection of any drafts, checks, and certificates of deposit that may be received by him on account of any claims due the state.

SEC. 2. The bank or banks designated as such depository shall be required to give security to the state, to be approved by the executive council, for the prompt collection of all drafts, checks, certificates of deposit, or coupons, that may be delivered to such depository by the treasurer of state for collection; and also for the safe keeping and prompt payment, on the treasurer's order, of the proceeds of all such collections; also, for the payment of all drafts that may be issued to said treasurer by such depository.

SEC. 3. The treasurer of state, on the receipt of any draft, check or certificate of deposit, on account of state dues, may place the same in such depository for collection, and it shall be the duty of such depository to collect the same without delay and shall charge no greater per cent. for such collection than the minimum per cent. charged to other parties and notify the treasurer when collected. On the receipt of such notice, the treasurer shall issue his receipt to the party entitled thereto, as now required by law.

SEC. 4. The provisions of this act shall in no way release the treasurer of state or his bondsmen, or any county treasurer or his bondsmen, from any liabilities now imposed by law.

SEC. 5. All acts and parts of acts inconsistent with this act are hereby repealed.

CHAPTER 5.

OF THE STATE LAND OFFICE AND REGISTER THEREOF.

SECTION 83. The register of the state land office shall keep his office at the seat of government. The books and records of such office shall be so kept as to show and preserve an accurate chain of title from the general government to the purchaser of each smallest subdivision of land; to preserve a permanent record in books suitably indexed of all correspondence with any of the departments of the general government in relation to state lands; to preserve by proper records copies of the original lists furnished by the selecting agents of the state, and of all other papers in relation to such lands which are of permanent interest.

SEC. 84. Separate tract books shall be kept for the university lands, the saline lands, the half-million acre grant, the sixteenth sections, the swamp lands, and such other lands as the state now owns or may hereafter own, so that each description of state lands shall be kept separate from all others, and each set of tract books shall be a complete record of all the lands to which they relate.

SEC. 85. Said tract books shall be ruled in a manner similar to those used in the United States land offices, so as to record each tract by its smallest legal subdivisions, its section, township, and range, to whom sold, and when, the price per acre, to whom patented, and when.

SEC. 86. The state land office shall be kept open during business hours, and shall have the personal supervision of the register; the documents and records therein shall be subject to inspection, in the presence of the register, by parties having an interest therein, and certified copies thereof, signed by said register with the seal of said office attached, shall be deemed presumptive evidence of the fact to which they relate, and on request they shall be furnished by the register for a reasonable compensation.

SEC. 87. Patents for lands shall issue from the state land office, shall be signed by the governor and recorded by the register; and each patent shall contain therein a marginal certificate of the book and page on which it is recorded, which certificate shall be signed by the register, and all patents shall be delivered free of charge.

SEC. 88. No patent shall be issued for any lands belonging to the state, except upon the certificate of the person or officer specially charged with the custody of the same, setting forth the appraised value per acre, name of the person to whom sold, date of sale, price per acre, amount paid, name of person making final payment, and of person who is entitled to the patent, and if thus entitled by assignment from the original purchaser, setting forth fully such assignment, which certificate shall be filed and preserved in the land office.

SEC. 89. The register is authorized and required to correct all errors may be corrected. clerical errors of his office, in name of grantee, and description of tract of land conveyed by the state found upon the records of such office; he shall attach his official certificate to each conveyance so corrected, and the reasons therefor; record the same with the

Office: duties.
R. 2292, 95.

Separate tract
books kept.
R. 291.

How ruled and
kept.
R. 293.

Office hours:
records subject
to inspection:
to give certifi-
cate.
10 G. A. ch. 103.
21.

Patents how is-
sued and re-
corded.
R. 297.

When patents
may issue.
R. 2298, 99.

record of the original conveyance, and make the necessary correction in the tract and plat books of his office. Such corrections, when made in accordance with the foregoing provisions, shall have the force and effect of a deed originally correct, subject to prior rights accrued without notice.

Receive and
preserve pa-
pers, records,
and maps of
public surveys.
12 G. A. ch. 3.

SEC. 90. The register shall receive any field notes, maps, records, or other papers relating to the public survey of this state, whenever the same shall be turned over to the state in pursuance of an act of congress, entitled "an act for the discontinuance of the office of surveyor general in the several districts as soon as the surveys therein can be completed, for abolishing land offices under certain circumstances, and for other purposes," approved June 12, 1840, and any act amendatory thereof, and shall provide for their safe keeping and proper arrangement as public records; and free access to the same by the lawful authority of the United States, for the purpose of taking extracts therefrom, or making copies thereof, shall always be granted.

When gover-
nor may relin-
quish title to
lands patented
to the state.
12 G. A. ch. 10,
§ 1.

SEC. 91. Whenever the governor is satisfied by the commissioner of the general land office that the title to any lands which may have been certified to the state under any of the several grants, is inferior to the rights of any valid interfering preemptor or claimant, he is authorized and required to release by deed of relinquishment such color of title to the United States, to the end that the requirements of the Interior Department may be complied with, and that such tract or tracts of land may be patented by the general government to the legal claimants.

Governor may
in certain cases
quit claim.
Same, § 2.

SEC. 92. Whenever the governor is satisfied by proper record evidence that any tract of land which may have been deeded by virtue of any donation or sale to the state, is not the land intended to have been described, and that an error has been committed in making out the transfers, in order that such error may be corrected, he is authorized to quit-claim the same to the proper owner thereof, and to receive a deed or deeds for the lands intended to have been deeded to the state originally.

Lists of lands
inuring to
grantee.
11 G. A. ch. 83.

SEC. 93. In cases where lands have been granted to the state of Iowa by act of congress and certified lists of lands inuring under the grant have been made to the state by the commissioner of the general land office as required by act of congress, and such lands have been granted by act of the general assembly to any person or company, and such person or company shall have complied with and fulfilled the conditions of the grant, the register of the state land office is hereby authorized to prepare, on the application of the grantee, a list or lists of lands situated in each county inuring to such grantee, from the lists certified by the commissioner of the general land office, as aforesaid, which shall be signed by the governor of the state and attested by the secretary of state with the state seal, and then be certified to by the register to be true and correct copies of the lists made to this state, and deliver them to such grantee, who is hereby authorized to have them recorded in the proper county, and when so recorded they shall be notice to all persons the same as deeds now are, and shall be evidence of title in such grantee or his or its assigns to the lands therein described under the grant of congress by which the lands were certified to the state, so far as the certified lists made

Lists recorded.

by the commissioner aforesaid conferred title to the state; but where lands embraced in such lists are not of the character embraced by such acts of congress or the acts of the general assembly of the state, and are not intended to be granted thereby, the lists, so far as these lands are concerned, shall be perfectly null and void, and of no force or effect whatever; provided that no lands now in suit shall be included in such lists until said suits are determined and such lands adjudged to be the property of the company; provided, further, that the register shall not include in any of the lists so certified to the state, which have been adjudicated by the proper courts to belong to any other grant, or adjudicated to belong to any county or individual under the swamp land grant, or any homestead or pre-emption settlement. Nor shall said certificate so issued confer any right or title as against any person or company having any vested right, either legal or equitable, to any of the lands so certified.

[A substitute for the original section, 18 G. A., ch. 167. As to recording of land grant titles by railway companies, see 18th G. A., ch. 186, inserted after § 1947.]

TRANSFER OF STATE LAND OFFICE TO OFFICE OF SECRETARY OF STATE.

[Eighteenth General Assembly, Chapter 206.]

SEC. 1. On and after the first Monday in January in the year 1883, the office of register of the state land office shall be transferred to the custody of the secretary of state and the present incumbent of the office of register of the state land office shall then turn over and deliver to the secretary all books, papers, maps, furniture and property of every description held by him as belonging to his office.

Register to turn
over books and
papers Jan.
1, 1883.

SEC. 2. From and after the first Monday of January in the year 1883, all business pertaining to the office of register of the state land office as provided by law, and all duties now required to be performed by the said register, shall thereafter be performed by the secretary of state, and he shall have and hold possession and control of all the property turned over to him, as specified in section one of this act.

Duties of reg-
ister to be per-
formed by sec-
retary of state.

SEC. 3. In addition to the clerical force now allowed by law to the secretary of state for the performance of the duties of his office, he shall be allowed one additional clerk, whose duty it shall be to perform the clerical work pertaining to the land department, as directed by the secretary, and he shall also perform such other duties as the secretary may direct.

Clerk of land
department.

SEC. 4. The salary of the clerk provided for in this act shall be twelve hundred dollars per annum, to be paid at the end of each month, and the auditor of state shall draw a warrant on the state treasury in favor of said clerk on the certificate of the secretary of state, stating the amount that may be due.

Salary of clerk

SEC. 5. The office of register of the state land office is hereby abolished from and after the first Monday in January in the year 1883.

Office of regis-
ter abolished.

CHAPTER 6.

OF THE STATE PRINTER.

When and how elected. SECTION 94. The state printer shall be elected at each regular session of the general assembly by a joint vote thereof, and shall hold his office for two years from the time he enters upon the duties of such office.
R. §§ 133, 136.

To enter upon duties. SEC. 95. The person elected shall enter upon the duties of such office on the first day of May in the year following that in which he is elected.
R. §§ 134, 135.

Office: duties. SEC. 96. He shall keep an office at the seat of government, with sufficient material, type, presses, and workmen to print the laws, journals of the two houses of the general assembly, the incidental printing thereof, and all forms and blanks of the several state officers, together with the incidental printing of the state. A failure to keep such office at said place, and promptly perform in a workmanlike manner all the duties required shall be deemed a resignation of said office.
R. § 147.

Printing: how to be executed. SEC. 97. He shall print the laws, journals, forms, and blanks aforesaid as the same may be required, in a neat and workmanlike manner, and promptly perform and deliver the same, so that the public business shall not be delayed or suffer from any failure to have the work done in a reasonable and proper time.
R. §§ 138, 140.

Duty of secretary of state. SEC. 98. The secretary of state, upon the completion of any printing done for the state, shall examine whether it has been properly executed according to the provisions of this chapter, and should it be thus executed, he shall give his receipt therefor, stating the same, together with the amount to which the printer is entitled for said work; and, if not so executed, he may, nevertheless, receive the same and give his receipt therefor, noting said deficiency in said receipt.
R. § 141.

Auditor to issue warrant. SEC. 99. The auditor of state on the production of the aforesaid receipt of the secretary of state, shall issue his warrant on the state treasurer for the amount therein stated; and should there be a deficiency noted on said receipt, he is hereby required to order suit to be commenced immediately against the printer and his securities on his official bond, and report the proceedings therein in his next report to the governor.
R. § 143.

Printing ordered by general assembly. SEC. 100. Whenever printing is ordered by either house of the general assembly, the secretary or chief clerk thereof shall immediately notify the secretary of state of such order, and when such printing is done, the same shall be delivered to the secretary of state for distribution. The accounts for such printing shall be audited upon the receipt of the secretary of state as provided in the two preceding sections.
R. § 142.

When copies of laws shall be furnished, and when same shall be printed. SEC. 101. Within fifty days after the secretary of state shall deliver to the state printer a copy of the laws, joint resolutions, and memorials passed at any session of the general assembly, he shall print all the copies thereof that may be by law required, and the secretary of state shall, within five days after the same are printed, make out and deliver to such printer an index of the
R. § 144.

same, who shall, within ten days after receiving such index, print the same and deliver to the state binder such copies in sheets as [are] required for binding; but this section shall not apply to this or any other revised code adopted by the general assembly.

SEC. 102. The laws, journals, and all other printing in book form shall be printed in long primer type, except the head-notes and indexes, which shall be in brevier type, the pages whereof shall contain not less than seventeen hundred and fifty ems of solid matter, and all rule and figure work shall be printed either in brevier or nonpareil type, as may be ordered by the officer ordering the work. Whenever a subject is commenced, whether it be the name of a member or otherwise, the subject matter shall follow in the same line, unless such line is filled by such word. The report of each motion or resolution shall be embraced in one paragraph, and where the yeas and nays are given, each division list shall be in one paragraph, with the names run in alphabetically, and the result given in the last line.

SEC. 103. The secretary of state shall provide a "state paper receipt book," and whenever he shall deliver to the state printer paper for any kind of printing, a receipt therefor shall be entered in said book, which receipt shall describe the kind and quality of paper so delivered.

SEC. 104. Whenever any work is performed by the state printer, he shall certify, under oath, the amount of paper used in said work to the secretary of state, who, when satisfied that the same is correct, shall give a receipt to the state printer, which shall be a voucher therefor, and no work shall be paid for until such certificate shall be furnished.

SEC. 105. The state printer shall have one thousand copies of each report of the state officers printed and delivered to the state binder twenty days before the meeting of the general assembly; and he shall deliver the sheets of all other work that requires binding as soon as the same are printed and ready for folding; and shall take duplicate receipts therefor, one of which shall be filed in the office of the secretary of state.

CHAPTER 7.

OF THE STATE BINDER.

SECTION 106. The state binder shall be elected at each regular session of the general assembly by a joint vote thereof, and shall hold his office for two years from the time he enters upon the duties of such office.

SEC. 107. The person elected shall enter upon the duties of such office on the first day of May in the year following that in which he is elected.

SEC. 108. He shall keep his office at the seat of government, and bind the laws and journals, and perform the incidental bind-

Manner of printing.
R. §§ 139, 156.

Secretary of state to provide receipt book.
R. § 157.

Paper used to be certified.
R. § 158.

When copies of reports to be delivered to binder.
R. §§ 173, 2177, 2178.

Office: duties
R. §§ 168, 169, 173, 2178.

ing of the two houses of the general assembly, and such as may be required by the several state officers, in a neat, substantial, and workmanlike manner, and promptly perform such work so that the public business may not be delayed, and deliver the same to the secretary of state, taking his receipt therefor; and the reports of the state officers shall be so delivered before the first day of the session of the general assembly.

Duty of secretary of state.
R. § 171.

SEC. 109. The secretary of state, upon the completion of any binding as aforesaid, shall examine whether it has been executed according to law, and should it be thus executed, he shall give his receipt therefor, stating the same, together with the amount to which the binder is entitled for said work; and if not so executed, he may, nevertheless, receive the same and give his receipt therefor, noting said deficiency in said receipt.

Auditor to issue warrant.
R. § 172.

SEC. 110. The auditor of state, upon the production of the aforesaid receipt, shall issue his warrant on the state treasurer for the amount therein stated; and should there be a deficiency noted in said receipt, he is hereby required to order suit to be commenced immediately against the binder and his securities on his official bond, and report the proceedings thereon in his next report to the governor.

CHAPTER 8.

OF THE EXECUTIVE COUNCIL.

Who composes.
R. § 98.

SECTION 111. The governor, auditor, secretary, and treasurer of state, or any three of them, shall constitute the executive council.

Duties in relation to census.
R. § 99.

SEC. 112. The executive council must prepare and cause to be printed suitable blank forms for the purpose of taking the census, which, together with such printed directions as will be calculated to secure uniformity in the returns, must be furnished to the respective county auditors, and by them to the township assessors, on or before the first Monday in January of the year in which the census is to be taken.

Census: how to be taken.
R. § 99.

SEC. 113. The township assessor of each township shall, at the time of assessing property in the year eighteen hundred and seventy-five, and every ten years thereafter, take an enumeration of the inhabitants in his township.

Duty of assessor.
R. § 99.

SEC. 114. Said assessor shall make a return on or before the first day June of such enumeration to the auditor of the county, who shall make and forward to the secretary of state on or before the first day of September in the current year, an abstract of said census return, showing:

- The total number of males;
- The total number of females;
- The number of persons entitled to vote;
- The number of militia;

The number of foreigners not naturalized;
The total number of children between five and twenty-one years of age;

The number of families and the number of dwelling houses;

The number of acres of improved and unimproved lands;

An enumeration of agriculture, mining and manufacturing statistics, including the value of the products of the farm, herd, orchard, and dairy, each, and the value of manufactured articles, and of minerals sold, the year preceding the census;

The number of miles of railways finished and unfinished;

The number of colleges and universities, with the number of pupils therein.

SEC. 115. The executive council may require such other matters to be ascertained and returned as they deem expedient. Other matters R. § 934.

SEC. 116. The secretary of state shall file and preserve in his office the abstracts received from the county auditors, and cause an abstract thereof to be recorded in a book to be by him prepared for that purpose, and published in such manner as the executive council may direct. Secretary of state to preserve: publication R. § 936.

SEC. 117. When any township assessor fails to make an accurate return of the census as herein provided, the county auditor may appoint some suitable person to take the census according to the provisions of this chapter, at as early a day as practicable; which shall be done at the expense of the county in which the service is performed. Remedy when assessor fails to return. R. § 937.

SEC. 118. The executive council may require any auditor failing to make returns as herein provided, to send up the returns as soon as practicable at the expense of the delinquent county. Returns sent at expense of county. R. § 938.

SEC. 119. The secretary of state shall keep a journal in which shall be entered all acts of the executive council. Journal kept. R. § 939.

SEC. 120. The executive council shall have the charge, care, and custody of the property of the state, when no other provision is made, and shall procure for the several offices of the governor, secretary of state, auditor and treasurer of state, register of state land office, superintendent of public instruction, attorney-general and state librarian, and clerk of the supreme court, fuel, lights, blank books, postage, furniture, and any other thing necessary to enable such officers to promptly and efficiently perform the duties of their several offices; the accounts for any expenditures under this section, including repairs of the state house and such other necessary and lawful expenses as are not otherwise provided for shall be audited upon the certificate of such council and the warrants drawn therefor paid by the treasurer of state. The executive council shall report to each regular session of the general assembly the amounts expended, and in general terms what for and how much for each office. Custody of state property: providing for state offices.

[As amended by 16th G. A., ch. 142, § 8. The other sections of the act are temporary.]

CHAPTER 9.

OF DUTIES ASSIGNED TO TWO OR MORE OFFICERS JOINTLY; AND
GENERAL REGULATIONS.

Executive council to advertise for stationery.
R. & § 61, 81,
2169.
C. 51, §§ 45, 60.

SECTION 121. The executive council shall make estimates of all the paper needed for the public printing, and of all the stationery necessary for the general assembly, the public offices, and the supreme court; and the auditor shall advertise for sealed proposals of the quantity, quality, and kinds thereof which may be needed, in two newspapers at the seat of government, and in such other newspapers as they may deem expedient, requiring a delivery of the articles at least ninety days before the same will be wanted, and bids for the same shall be opened by said executive council, at such time as may be fixed by said advertisement; and they shall award the contracts for furnishing such stationery, paper, etc., to the lowest responsible bidders therefor, who shall give security, to be approved by them, for the performance of their contracts; and upon the delivery of the articles contracted for at the office of the secretary of state, in compliance with the terms of said contracts, and presenting receipts therefor, signed by the secretary to the auditor of state, he shall issue to the contractors his warrants on the treasurer for the amount due, which shall be paid out of any money in the treasury not otherwise appropriated.

Secretary of state to take charge of paper.
R. & 2170.
10 G. A. ch. 22,
§ 12.

SEC. 122. The secretary of state shall take charge of said articles, and furnish the public printer all the paper required for the various kinds of public printing in such quantities as may be needed for the prompt discharge of his duties; and he shall supply the governor, secretary of state, auditor, treasurer, judges of the supreme court and clerk thereof, attorney-general, supreme court reporter, superintendent of public instruction, register of the state land office, general assembly and clerks or secretaries thereof, such quantities as may be required for the public use and necessary to enable them to perform their several duties as required by law, taking receipts of the proper officers therefor.

[Fifteenth General Assembly, Chapter 1.]

Secretary of state to furnish stationery to committees of general assembly.

Mode of drawing same.

SEC. 1. It is hereby made the duty of the secretary of state to furnish to and supply the standing committees of the senate and house of representatives, and any select or special committees that are or may be raised or appointed by the general assembly, or either branch thereof, with all the stationery necessary for the use of such committees.

SEC. 2. In order to draw such stationery, the chairman of each of said committees shall from time to time, as he may deem necessary, make out his requisition on the secretary of state for the amount and kind deemed necessary, and upon presentation thereof, to said secretary, he shall deliver the same to said chairman and take a receipt therefor, which requisition and receipt shall be filed in the office of said secretary, and shall be a sufficient voucher to him for such stationery.

SEC. 123. Where an appropriation shall be made as a contingent fund for any office or officer, or for any other purpose to be expended for the state, the officer or person having charge of such fund shall keep an account therewith, showing when, to whom, and for what, any portion of said fund has been expended, and to take and preserve receipts for all amounts expended.

Contingent
fund of any offi-
cer: how ac-
counted for.
R. §§ 2172, 2173.

SEC. 124. Such officer or person shall, on or before the first day of November preceding each regular session of the general assembly, report to the auditor of state, stating in detail in what manner such funds have been expended, and shall not be credited with any expenditure unless the same has been done in the manner contemplated by the law making the appropriation, nor unless he has preserved and filed with such auditor proper receipts and vouchers for each sum expended. All funds not properly accounted for may be recovered by the state from the person or officer charged therewith, with fifty per cent. damages on the same. The auditor shall, in his report to the governor, state the condition in detail of each of the appropriations referred to in this and the preceding section.

Report of cor-
tingent fund to
be made.
R. §§ 2174 2175.
2176.

[Sec. 125 repealed by 16th G. A., ch. 159, § 9; see that act inserted following § 132.]

SEC. 126. Every person appointed or elected a regent, trustee, manager, commissioner, or inspector, or a member of any board of regents, trustees, managers, commissioners, or inspectors, now or hereafter created or provided by law for the government, control, management, or inspection of any public building, improvement, or institution whatever, owned, controlled, or managed, in whole or in part, by or under the authority or direction of this state, shall, before entering upon the discharge of his duties as such regent, trustee, manager, commissioner, or inspector, take and subscribe an oath, in substance and form as follows: "I, (here insert affiant's name) do solemnly swear that I will support the constitution of the United States, and of the state of Iowa; that I will honestly and faithfully discharge the duties of (here describe the nature of the office, trust, or position as regent, trustee, manager, commissioner, or inspector, as the case may be), according to the laws that now are, or that may hereafter be in force regulating said institution, and prescribing the duties of regents, trustees, managers, commissioners or inspectors thereof, (as the case may be); that I will, in all things, conform to the directions contained in said law or laws, and that I will not, directly or indirectly, as such regent, trustee, manager, commissioner, or inspector, (as the case may be) make, or enter into, or consent to any contract or agreement, expressed or implied, whereby any greater sum of money shall be expended or agreed to be expended than is expressly authorized by law at the date of such contract or agreement.

Officers to take
an oath: form
R. § 2180.

SEC. 127. Any officer who shall be empowered to expend any public moneys, or to direct such expenditures, is hereby prohibited from making any contract for the erection of any building, or any other purpose, which shall contemplate any excess of expenditures, beyond the terms of the law under which said officer was appointed.

When prohib-
ed from con-
tracting.
R. § 2181.

Oaths: where filed: penalty.
R. & 2183.

SEC. 128. Oaths required by this chapter shall be filed in the office of the auditor of state, and he shall not draw any warrant on the state treasury for the purposes for which said officers are appointed, until such oaths are so filed.

[Secs. 129 and 130 repealed by 16th G. A., ch. 159, § 9; see that act inserted following § 132.]

Secretary of state to distribute documents where no provision is made.
10 G. A. ch. 30,
§ 1, 3.

SEC. 131. Whenever any public documents are in the hands of the secretary of state, the distribution of which is not otherwise provided for, he shall transmit one copy of each to every public library in the state which shall be regularly incorporated, and which shall also have filed with the secretary of state an affidavit of its president and secretary, stating that it is in actual operation as a public library within this state, and contains more than two hundred volumes.

Books and accounts to be subject to inspection.
R. §§ 80, 90.
C. § 51, §§ 59, 69.

SEC. 132. The books, accounts, vouchers, and funds belonging to, or kept in any state office or institution, or in the charge or under the control of any state officer or person having charge of any state funds or property, shall, at all times, be open or subject to the inspection of the governor or any committee appointed by him, or by the general assembly or either house thereof, and the governor shall see that such inspection of the office of state treasurer is made at least four times in every twelve months.

REPORTS OF PUBLIC OFFICERS AND INSTITUTIONS.

[Sixteenth General Assembly, Chapter 159.]

Reports of officers: when to be made.

SEC. 1. The register of the state land office, the adjutant-general, the boards of trustees of all the institutions except the state agricultural college and farm and the hospitals for the insane, the wardens of the penitentiaries, the visiting committee to the hospitals for the insane, the board of fish commissioners, and the board of curators of the state historical society shall, on or before the first day of November preceding each regular session of the general assembly, transmit to the governor of the state a report of the condition and needs of the offices, or institutions, severally intrusted to their care, as well as of all other matters upon which reports are now required of such officers and boards; and also a statement showing in detail the expenditure of all public moneys placed or coming into the hands of said boards, with each voucher or duplicate voucher for all expenditures they have made.

Biennial fiscal term.

SEC. 2. The biennial fiscal term of the state shall end on the 30th day of September, in 1877, and each odd-numbered year thereafter; and the succeeding term shall begin on the day following; and the reports of officers and institutions shall cover the period thus indicated, and shall show the condition of their offices and institutions, respectively, on that day; *provided*, that this section shall not apply to the state agricultural college and farm.

Proviso: ag. college.

SEC. 3. The governor shall cause to be printed of the various public documents as follows:

Number to be printed of various documents.

Of the biennial message, ten thousand copies; of the governor's inaugural address, five thousand copies; of the report of the auditor of state, seven thousand copies; of the report of the superintendent of public instruction, six thousand copies; of the report

of the state agricultural college, four thousand copies; and of each of the other reports three thousand five hundred copies.

The secretary of state shall make distribution thereof as follows: to the members of the general assembly six thousand copies of the message, two thousand each of the inaugural address, the report of the auditor of state, and the report of the superintendent of public instruction; and one thousand copies of each of the other reports; one thousand copies of the message, and five hundred copies of each of the other documents, to remain with the state for the use of future general assemblies, and special calls therefor;—one thousand copies to be stitched and bound in boards in books containing a copy of each report, to be distributed as follows: one copy to each officer and member of the general assembly, one to each state officer, one to each state office to remain therein; one copy to each state institution to remain therein; one to each member of the several boards, and one to each officer of the institutions who is required by law to make report; one copy to each district judge, each circuit judge and each district attorney; one to the office of the county auditor in every county, to belong to said office; one copy to each newspaper in the state; eighty copies to the state historical society; a sufficient number to the secretary of state to enable that officer to make the distribution provided for in section one thousand eight hundred and ninety-eight of the code; and the remainder to be placed under the control of the executive council. The remaining unbound copies of the documents shall be distributed to the officers and institutions respectively making report.

SEC. 4. The secretary of the senate and clerk of the house of representatives shall transcribe the journals of their respective houses, in books furnished for that purpose by the secretary of state, and after having certified to the correctness of the same, shall deliver them to the secretary of state for preservation in his office.

SEC. 5. The secretary and clerk shall superintend the printing and indexing of their respecting journals, and it shall be the duty of each to deliver a carefully prepared copy thereof to the state printer, written up in solid paragraphs, as nearly as practicable, within two months from the day of adjournment of the general assembly, and upon a failure to deliver within the time above prescribed, they shall be entitled to receive only one-half of the compensation hereinafter provided.

SEC. 6. Within ninety days after the copy shall have been delivered to him, the state printer shall print fifteen hundred copies of the journal of each house, and the state binder shall complete the binding within sixty days after the sheets shall have been delivered to him.

One thousand copies shall be bound in half sheep; the remainder shall be in paper covers.

Failure on the part of either the state printer or the state binder to complete the work required of him in this section within the time prescribed will work a forfeiture of one-half the usual compensation.

SEC. 7. The secretary and the clerk shall make distribution of the journals of their respective houses as follows:

Distribution of same.

Journals of house and senate.

Same: duty of secretary and clerk.

Same: duty of state printer; state binder.

Distribution of journals.

The bound copies as provided for the bound documents in section three hereof, with an additional number of twenty-five copies to the secretary and clerk respectively; of the unbound copies, two to be sent to each member of the house to which such journal pertains, and one to be sent to each member of the other house, and one to each reporter and employe of the general assembly.

The undistributed number shall be placed under the control of the executive council.

Compensation to secretary and clerk.

SEC. 8. As a compensation for the services herein required, the secretary and clerk shall each receive six hundred dollars to be paid out of the state treasury, one-half of which shall be allowed and paid when the copy is furnished to the state printer, and the transcribed journal filed in the office of the secretary of state, and the remainder when the secretary and clerk shall have certified under oath, that they have distributed the journals according to the provisions of this act.

Repealing clause.

SEC. 9. Sections one hundred and twenty-five, one hundred and twenty-nine, one hundred and thirty, and eighteen hundred and ninety-eight, the last sentence of section sixteen hundred and ten, and all other sections, and parts of sections of the code inconsistent herewith, are hereby repealed, and the words "annually on or before the first day of January," are stricken from the third sub-division of section one thousand and fifty-six of the code.

Exchange of public documents.

SEC. 10. Public documents, including reports of the supreme court, will be sent to the congressional library, the governments of the Dominion of Canada and Newfoundland, and any other governments which shall be found willing to reciprocate.

OFFICERS OF STATE INSTITUTIONS.

[Seventeenth General Assembly, Chapter 67.]

Unlawful to contract debt beyond appropriation.

SEC. 1. It shall be unlawful for any trustee, superintendent, warden, or other officer, of any of the educational, penal, or charitable institutions of this state to contract any indebtedness against said institutions, or the state, in excess of the appropriation made for said institution; *provided*, that nothing herein contained shall prevent the incurring of an indebtedness on account of support funds for state institutions upon the prior written direction of the executive council specifying the items and amount of such indebtedness to be increased and the necessity therefor.

Proviso: Indebtedness on account of support fund.

SEC. 2. It shall be unlawful for any superintendent, warden, trustee, or other officer of any of the institutions mentioned in section one of this act to divert any money that has been or may be appropriated for the use of said institutions to any other purpose than the specific purpose named therefor in the act appropriating the same.

Money not to be diverted from specific purpose of appropriation.

SEC. 3. Any person violating any of the provisions of sections one and two of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail for not more than one year, or by both fine and imprisonment.

Penalty for violating §§ 1 and 2.

[Seventeenth General Assembly, Chapter 144.]

SEC. 1. It shall be unlawful for any trustee, warden, superintendent, steward, or any other officer of any educational, penal, charitable, or reformatory institution, supported in whole or in part by the state, to be interested directly or indirectly in any contract to furnish or in furnishing provisions, material, or supplies of any kind, to or for the institution of which he is an officer; and it shall be unlawful for any such trustee, warden, superintendent, steward, or other officer, directly or indirectly, to receive in money or other valuable thing any commission, percentage, discount, or rebate on any provision, material, or supplies furnished for or to any institution of which he is an officer. And it shall be unlawful for any such trustee, warden, superintendent, steward, or other officer of any state institution to be directly or indirectly interested in any contract with the state to build, repair, or furnish any institution of which he may be an officer.

No officer
shall be inter-
ested in fur-
nishing sup-
plies.

SEC. 2. Any person violating the provisions of section one of this act shall be guilty of a misdemeanor, and on conviction thereof shall be fined not less than one hundred dollars, nor more than one thousand dollars, in the discretion of the court, or imprisoned in the county jail not exceeding one year, or both, such fine and imprisonment in the discretion of the court.

Or any con-
tract to build,
&c.
Penalty.

TITLE III.

OF THE JUDICIAL DEPARTMENT.

CHAPTER 1.

OF THE ORGANIZATION OF THE SUPREME COURT.

[See Const., Art. 5.]

Place of hold-

SECTION 133. The supreme court shall be held at the seat of government, at the city of Davenport in the county of Scott, the city of Dubuque in the county of Dubuque, and at the city of Council Bluffs in the county of Pottawattamie.

Time.

R. § 2624, 2640, same.
12 G. A. ch. 27,
§ 1. ch. 27, § 3,
13 G. A. ch. 42,
14 G. A. ch. 5;
ch. 37, §§ 3, 4;
ch. 70.

SEC. 134. There shall be two terms a year held at each place; at the seat of government, on the first Monday in June and December; at Davenport, on the first Monday in April and October; at Dubuque, on the third Monday in April and October; and at Council Bluffs, on the third Monday in March and September.

Causes: where taken.

R. §§ 2642, 2643,
12 G. A. ch. 14,
§ 1; ch. 27, § 3,
13 G. A. ch. 42,
14 G. A. ch. 5;
ch. 37, §§ 3, 4;
ch. 70.

SEC. 135. Except otherwise provided, all appeals must be taken to the terms at the seat of government; but from the counties of Clinton, Scott, Johnson, Iowa, Cedar, Muscatine, Louisa and Washington, appeals shall be taken to Davenport; from the counties of Allamakee, Bremer, Butler, Blackhawk, Buchanan, Clayton, Chickasaw, Delaware, Dubuque, Floyd, Winneshiek, Mitchell, Grundy, Fayette, Jones, Linn, Benton, Howard and Jackson, to Dubuque; and from the counties of Fremont, Page, Taylor, Ringgold, Union, Adams, Montgomery, Mills, Pottawattamie, Cass, Shelby, Harrison, Monona, Crawford, Woodbury, Ida and Plymouth, to Council Bluffs. With the consent of the appellee expressed in writing on the notice of appeal, causes may be taken from any county to either place where it is provided the court shall be held.

[As amended by 16th G. A., ch. 76.]

When heard.

R. § 2641.
12 G. A. ch. 27,
§ 2.

SEC. 136. All causes on the docket shall be heard at each term unless continued for cause, and all causes thus continued shall be heard at the next term of each court unless transferred by agreement of parties to some other place named in section one hundred and thirty-three of this chapter.

Sheriff.

R. § 2625.
C. 51, § 1547.

SEC. 137. The sheriff of the county where the court is held, or his deputy, must attend upon the court.

Expenses.
C. 51, § 1548.
18 G. A. ch. 122,
§ 9.

SEC. 138. All bills for contingent expenses shall contain the items thereof, and shall be certified to as correct by the chief justice before being audited.

Quorum.

C. 51, § 1551.
10 G. A. ch. 28,
§ 4.

SEC. 139. The presence of three judges is necessary for the transaction of business, but one alone may adjourn from day to day, or to a particular day, or until the next term.

SEC. 140. When the court is equally divided in opinion, the judgment of the court below shall stand affirmed, but the decision is of no further force or authority.

Divided court
R. § 2628.
C. '51, § 1552.
10 G. A. ch. 23.
§ 5.

The court has however the same power in such case as in any other to grant a re-hearing: *Zeigler v. Vance*, 3-528.

SEC. 141. If all the judges fail to attend on the first day of the term, the clerk must enter the fact on record, and the court shall stand adjourned until the next day, and so on until the fourth day; then, if none of the judges appear, the court shall stand adjourned until the next term.

SEC. 142. No process or proceeding shall in any manner be affected by an adjournment or failure to hold court, but all shall stand continued to the next term, without any special order to that effect.

SEC. 143. The opinions of the court, and those of any judge dissenting therefrom, on all questions reviewed on appeal, as well as such motions, collateral questions, and points of practice as such court may think of sufficient importance, shall be reduced to writing and filed with the clerk.

Construed, *Baker v. Kerr*, 13-384.

SEC. 144. The records and reports must in all cases show whether a decision was made by a full bench, and whether either, and if so, which of the judges dissented from the decision.

Records show.
R. § 2636, 2737.
C. '51, §§ 1560-1.

SEC. 145. If the decision, in the judgment of the court, is not of sufficient general importance to be published, it shall be so designated, in which case it shall not be included in the reports, and no case shall be reported except by order of the full bench.

Reports: what included.

NUMBER OF JUDGES.

[Sixteenth General Assembly, Chapter 7.]

SEC. 1 Hereafter the supreme court shall consist of five judges, three of whom shall constitute a quorum to hold court.

[Sec. 2 provides for the election of the additional judge; see § 582.]

CHAPTER 2.

OF THE CLERK OF THE SUPREME COURT.

SECTION 146. The office of the clerk of the supreme court shall be kept at the seat of government, and he shall keep a complete record of all proceedings of the court.

Office: duty.
R. § 2647, 2648.
C. '51, § 1564.

SEC. 147. He must not allow any written opinion of the court to be removed from his office except by the reporter, but shall permit any one to examine or copy the same, and shall, when required, make a copy and certify to the same.

Control opinions.
R. § 2649.
C. '51, § 1565.

SEC. 148. He shall promptly announce by letter any decision rendered to one of the attorneys of each side, when such attorneys are not in attendance at the place of court.

Announce decision.
R. § 2650.
C. '51, § 1565.

SEC. 149. He shall record every opinion rendered by the court as soon as filed, and shall perform all the duties pertaining to his office.

Make record.
R. § 2651.
C. '51, § 1565.

CHAPTER 3.

OF THE ATTORNEY-GENERAL.

Appear for the
state.
R. § 124.

SECTION 150. The attorney-general shall attend in person at the seat of government during the session of the general assembly and supreme court, and appear for the state, prosecute and defend all actions and proceedings, civil and criminal, in which the state shall be a party or interested, when requested to do so by the governor, executive council, or general assembly, and shall prosecute and defend for the state all causes in the supreme court in which the state is a party or interested.

Written opin-
ions: when
given.
R. § 125.

SEC. 151. When requested, he shall give his opinion in writing upon all questions of law submitted to him by the general assembly or either house thereof, governor, lieutenant-governor, auditor, secretary of state, treasurer, superintendent of public instruction, register of the state land office, executive council, and district attorneys. He shall, when required, prepare drafts for contracts, forms, and other writings, which may be required for the use of the state, and shall report to the general assembly, when requested, upon any business pertaining to his office.

Pay money.
R. § 126.

SEC. 152. All moneys received by him belonging to the people of the state, or received in his official capacity, shall be paid into the state treasury.

Office: keep
record.
R. § 127, 130,
131.

SEC. 153. The executive council shall furnish him a suitable office at the seat of government. He shall keep in proper books; a record of all official opinions, and a register of all actions prosecuted and defended by him, and of all proceedings had in relation thereto, which books shall be delivered to his successor.

CHAPTER 4.

OF THE SUPREME COURT REPORTER.

Opinion taken.
19 G. A. ch. 22,
§ 8.

SECTION 154. When the opinions filed at any term of the supreme court are recorded by the clerk, the reporter may take and retain the same for a period not exceeding four months to prepare a report therefrom, but within such time they shall be returned to and remain in the office of such clerk.

[Sec's 155, 156 and 157 repealed; see act inserted following § 160.]

Copyright
Same, § 9.

SEC. 158. The copyright of all reports prepared or published after the first day of January, A. D. 1875, shall be the property of the state. But the reporter shall own the copyright of all reports published before that time, and the supreme court may order the publication of a new edition of any volume of which the copyright is owned by the reporter when the public interest requires it, and may require compliance therewith within six months by an

order entered of record; and if the reporter neglects or refuses to comply with such order, then such copyright shall be forfeited to the state.

SEC. 159. The copies received by the secretary of state shall be disposed of by him as follows: Two copies of each volume to the library of congress and the library of the supreme court of the United States; one copy to the library of each state and territory in the United States, to each judge of the supreme, district, and circuit courts, to the clerk of the supreme court and attorney-general; fifty copies to the state library, to be and remain therein as a part thereof, and one copy to each county in the state, and twenty copies to the law department of the state university, and twenty copies to the state historical society for exchange in such manner as the proper officers thereof think advisable, and the remaining copies, together with all reports now in the office of governor, secretary, auditor, treasurer of state, and register of the land office, and superintendent of public instruction, shall be used by the trustees of the state library in exchange for such books on law or equity, or reports of other states as they may select. All books received by such exchange shall be deposited in and become a part of the state library.

[Sec. 160 repealed; see following act.]

PUBLICATION OF SUPREME COURT REPORTS.

[Eighteenth General Assembly, Chapter 60.]

SEC. 1. Within sixty days after sufficient opinions are announced to make a volume, as herein provided, the supreme court reporter shall furnish and deliver at his office in Des Moines, Iowa, to the person, persons or corporation having the contract with the state for publishing the same, copies of such opinions, and with each opinion a syllabus, a brief statement of the facts involved, and the legal propositions made by counsel in the argument, with the authorities cited. But the argument shall not be reported at length; and within twenty days after the proof sheets for a volume are furnished to him by the publishers, at his office in Des Moines, Iowa, he shall furnish to said publishers an index and table of cases to such volume. The publishers shall furnish to the reporter, without delay, as soon as they shall be issued, two copies of the revised proof sheets of the opinions, head notes, indexes, and table of cases of each volume, for correction and approval by the judges of the supreme court, and shall cause such corrections to be made as shall be indicated therein by said judges. Each of said volumes shall contain not less than 750, nor more than 800 pages, exclusive of table of cases and index, and the workmanship and quality of material shall in every particular be equal to the first issue of volume forty of the Iowa Supreme Court Reports, and shall be approved and accepted by a majority of the judges of the supreme court.

SEC. 2. The copyrights of all the supreme court reports hereafter published shall vest in the secretary of state for the benefit of the people of this state, but this shall not be construed to prevent the contractor, by whom any volume is published, his representative or assigns, from continuing the exclusive publication

and sale of such volume so long as he or they shall, in all respects, comply with the requirements of this act in respect to the character, sale and price of such volume.

Contract for publication.
Price per volume.

SEC. 3. The supreme court reporter shall have no pecuniary interest in such reports, but the same shall be published under the contract, to be entered into by the executive council w'th the person, persons or corporation, who shall agree to publish and sell the same on the terms most advantageous to the people of this state, at a price not to exceed two dollars per volume, of the size and quality as provided for in this act. And if any such volume shall, in any way, or from any cause, contain more than eight hundred pages, no increased or additional price shall be charged therefor.

Proposal.

SEC. 4. The executive council shall, commencing in the first week in April, A. D. 1880, and every eight years thereafter, advertise weekly in six different newspapers in different localities in this state, for the term of six weeks, that sealed proposals will be received at the office of the secretary of state for printing, publishing and selling the said reports for the term of eight years next after the first day of June of said year, at a certain rate per volume, to be stated in said proposal, not exceeding the maximum price fixed by this act, and in accordance with the provisions of this act.

Deposit.

SEC. 5. Each bidder shall deposit with the state treasurer the sum of one thousand dollars before making his proposal, to be forfeited to the state in case he shall not make a contract according to his proposal if accepted, and according to the requirements of this act, and shall take a receipt from said treasurer and deposit the same with his proposal, and upon entering into the contract herein provided, or upon the proposal being rejected, the said sum shall be returned.

Terms of contract with publisher.

SEC. 6. The successful bidder shall enter into a contract that he will publish the supreme court reports of the state, of the quality, style and character, in all respects, as set out in section one of this act; that he will publish and deliver to the secretary of state, at the capital in Des Moines, two hundred and fifty copies, free of cost, for publication, on delivery at the earliest practicable time, and within sixty days after the delivery of the manuscripts for any one copy of such reports to the publishers; that he will stereotype the same, and at all times keep the same on sale in the state of Iowa, to residents of this state, for actual use, at the contract price, in suitable quantities, in the city of Des Moines; that he will furnish the state any number of additional copies that may be required for its own use at the contract price, and procure new stereotype plates whenever the original plates shall become defaced or destroyed; and the said contract shall fully provide for the carrying into effect of all the provisions of this act, and shall be made within thirty days after he is notified of the acceptance of his proposal.

Bond.

SEC. 7. The successful bidder shall, at the time of making his contract, execute and file with the treasurer of state a bond, in the penal sum of ten thousand dollars, conditioned to fulfill such contract in all particulars, with at least two sufficient sureties, residents of this state, to be approved by the executive council of

the state. Such bond shall, by its terms, be the joint and several obligations of the persons executing it. If the successful bidder shall fail to complete his contract, or shall forfeit the same for any cause, the executive council shall re-let the contract as soon thereafter as practicable, in the manner provided in this act; *provided, however,* that such bidder, in lieu of sureties to such bond, may deposit therewith bonds of the United States, payable to the bearer, amounting to not less than ten thousand dollars.

SEC. 8. The contract of the successful bidder required by this act shall contain, among others, the following covenants on his part:

FIRST.—That he will not take out in his own name, nor procure Covenants as to be taken out in the name of any person other than the secretary ^{to copyright} of state of this state, a copyright upon any volume of the supreme court reports published under such contract; and that upon any breach of this covenant he will pay to the treasurer of this state the sum of two thousand dollars as liquidated damages.

SECOND.—That in case it shall be determined in any action upon the bond of such contractor that he has failed in any respect to comply with the provisions of this act or his contract, the executive council may declare the contract forfeited; and that, upon such forfeiture so declared, such contractor will, upon demand, transfer to the secretary of state of this state, for the use of the state, the stereotyped plates of each volume of such reports published under such contract, or in default thereof will pay to the treasurer of this state two thousand dollars for each such volume as liquidated damages for a failure to make such transfer, and such failure shall be deemed a breach of the conditions of such bond, and such liquidated damages may be recovered by action on such bond.

SEC. 9. The supreme court reporter shall receive as his compensation for all services up to the first day of July, 1880, such sums as shall be paid to him by the state under existing laws for the publication of the supreme court reports, up to and including volume fifty-one. After the first day of July, 1880, the supreme court reporter shall receive an annual salary of two thousand dollars, payable quarterly upon the certificate of the judges of said court that he has properly performed the duties of reporter as required by this act.

SEC. 10. Sections 155, 156, 157 and 160, of chapter 4, title III, ^{Repealing clause.} of the Code, and all acts and parts of acts conflicting with the provisions of this act are hereby repealed; *provided,* That the passage of this act shall not be construed to affect the publication of the supreme court reports up to and including volume fifty-one; but in all other respects the provisions of this act shall be in force from the time it takes effect as hereinafter provided.

CHAPTER 5.

OF THE DISTRICT AND CIRCUIT COURTS AND JUDGES THEREOF.

Jurisdiction of district court. R. § 2663. C. 51, § 1576. 13 G. A. ch. 153, § 2. SEC. 161. The district court shall have and exercise general original jurisdiction, both civil and criminal, where not otherwise provided, and appellate jurisdiction in all criminal matters. Such court shall have a general supervision over all inferior courts and officers in all criminal matters, to prevent and correct abuses where no other remedy is provided.

The jurisdiction of the district court, which is a superior court of general original jurisdiction, can only be taken away by express words or irresistible implication. Therefore, held, that Revision § 2395, which prohibited the bringing of an action in that court on claims against an estate for a mere money demand, except with the approbation of the county court,

was not intended to do away with the jurisdiction of the district court, but merely as a restraint upon the plaintiff: *Sterrett v. Robinson*, 17-61; and that the failure on the part of the plaintiff to obtain such leave must be set up as a defense in the district court, and could not be made a ground of collateral attack on the judgment: *Cooley v. Smith*, 17-99.

Same: circuit court. 12 G. A. ch. 86, §§ 4, 5. 14 G. A. ch. 22, § 3.

SEC. 162. The circuit court shall have and exercise general original jurisdiction concurrent with the district court in all civil actions and special proceedings, and exclusive jurisdiction in all appeals and writs of error from inferior courts, tribunals, or officers, and a general supervision thereof in all civil matters, to prevent and correct abuses where no other remedy is provided.

The general supervision of the circuit court over inferior courts, etc., in civil matters is exclusive, and so is that of the district court under the preceding section in criminal matters. By § 3217 it was not intended to give jurisdiction in proceedings by *certiorari* indiscriminately to both courts, but to give each court juris-

diction in such proceedings in that class of cases under its supervision as here contemplated: *Keniston v. Henrill*, 48-679.

The circuit court has exclusive jurisdiction over appeals from the judgment of a court for the trial of contested county elections, under § 716: *McKinney v. Wood*, 35-167.

Terms. R. § 2653. C. 51, § 1566. 12 G. A. ch. 123. 14 G. A. ch. 22, § 6.

SEC. 163. The judicial districts and circuits, and the terms and places of holding the district and circuit courts therein, shall remain as at present fixed until changed in accordance with law. Where such terms are held in any city or incorporated town not the county seat of a county, such city or town shall provide and furnish the necessary rooms and places for such terms free of charge to the county.

Probate terms. 12 G. A. ch. 123.

SEC. 164. The circuit judge having jurisdiction in counties having two county seats, shall hold terms for probate business at each of said county seats.

Judges fix terms. R. § 2654-5. C. 51, § 1567-8. 12 G. A. ch. 86, § 24. 13 G. A. ch. 41, § 3. 14 G. A. ch. 22, § 4; ch. 113.

SEC. 165. At least two terms of each court shall be held in every organized county in each year, and the district and circuit judges of each judicial district shall, on or before the first Monday in December, A. D. 1873, and in each alternate year thereafter, designate and fix by an order under their hands, the times of holding the terms of such courts in each county in their districts for the two years next ensuing the first day of January thereafter, which order shall be forthwith forwarded by the district judge to the secretary of state and the clerk of the district court in each

county in such district, and the clerk shall file the same and enter it of record in the journal of each court, and cause such order to be published for four weeks in some weekly newspaper published in such county, if there be any such published. The secretary of state shall, within ten days after receiving said orders, or before the first Monday in January after said orders are made, prepare a tabular statement of the times of holding the several courts as fixed by the several orders in his office, and have printed one thousand copies thereof, which shall be distributed as follows:—One copy to each state officer, state library, library of the law department of the state university, each clerk of the district court, and sheriff, and the residue to the county auditors in proportion to the population of each county, for gratuitous distribution among the attorneys of the county.

[As amended by increasing the number of terms to *two* in each year, 15th G. A. ch. 12 § 1.]

SEC. 166. A special term may be ordered in any county at any regular term of court in that county, or at any other time, by the judge, for the trial of all causes pending at the last regular term of said court held prior to said special term, in which either party shall have served upon the opposite party or his attorney in the manner provided for service of original notice, at least twenty days prior to said special term, a notice in writing that such cause will be brought on for trial. When ordering a special term, the court or judge shall direct whether a grand or trial jury or both shall be summoned.

[A substitute for the original section, which only provided for the trial at a special term by consent of parties; 17th G. A., ch. 89.]

Under Rev. §§ 256-8, held, that a special term which was ordered for the same day fixed for the general term of the same court in another county, the latter being subsequent,

illegally adjourned to a later date, was not illegal: *The State v. Clark*, 30-168. The court may call a grand jury together at a special term: *The State v. Reid*, 20-4:3, 424.

SEC. 167. If the judge does not appear on the day appointed for holding the court, the clerk shall make an entry thereof in his record, and adjourn the court till the next day, and so on until the third day, unless the judge appears, provided three days are allowed for such term.

SEC. 168. If the judge does not appear by five o'clock of the third day, and before the expiration of the time allotted to the term of the court, it shall stand adjourned till the next regular term.

SEC. 169. If the judge is sick, or for any other sufficient cause is unable to attend court at the regularly appointed time, he may, by a written order, direct an adjournment to a particular day therein specified, and the clerk shall, on the first day of the term, or as soon thereafter as he receives the order, adjourn the court as therein directed.

The judge is clothed with full power over the adjournments of his court: *The State v. Clark*, 30-168.

SEC. 170. No recognizance, or other instrument or proceeding shall be rendered invalid by reason of there being a failure

Special term
may be ordered
at regular
term.
R. § 256-8.
C. 51, § 158-8.

71

Failure of
judge.
R. § 268.
C. 51, § 1581.

Stand ad-
journed.
R. § 269.
C. 51, § 1582.

Judge may or-
der adjourn-
ment.
R. § 2670.
C. 51, § 1583.

No proceeding
invalid.
R. § 2671.
C. 51, § 1584.

of the term; but all proceedings pending in court shall be continued to the next regular term, unless an adjournment be made as authorized in the last preceding section.

Parties: when
to appear.
R. § 2672.
C. § 51, § 1585.

SEC. 171. In cases of such continuances or adjournments, persons recognized or bound to appear at the regular term which has failed as aforesaid, shall be held bound in like manner to appear at the time so fixed, and their sureties, if any, shall be liable in case of their non-appearance, in the same manner as though the term had been held at the regular time and they had failed to make their appearance thereat.

SEC. 172. Upon any final adjournment of the court, all business not otherwise disposed of, will stand continued generally.

SEC. 173. When a county is not provided with a regular court house at the place where the courts are to be held, they shall be held at such place as the board of supervisors provide.

SEC. 174. If no suitable place be thus provided, the court may direct the sheriff to procure one.

SEC. 175. The district judges may interchange and hold each other's courts; and so may the circuit judges.

This section is not in conflict with another judge, is not acting without authority: *The State v. Stingley*, 10-488.

Records read.
R. § 2664.

SEC. 176. The clerk shall, from time to time, read over all the entries made of record in open court; which, when correct, shall be signed by the judge.

The provisions of this and the following sections as to signing the record are directory only, and a failure to comply therewith does not render a judgment void: *Childs v. McChesney*, 20-431; *Hamilton v. Barton*, 20-505.

Same.
R. § 2665.
C. § 51, § 1578.

SEC. 177. When it is not practicable to have all the records prepared and thus approved during the term, they may be read, corrected and approved at the next succeeding term; but such delay shall not prevent an execution from issuing in the meantime; and all other proceedings may take place in the same manner as though the record had been approved and signed. Entries authorized to be made in vacation shall be read, approved, and signed at the next term of the court.

This section is directory, and the failure to have such entries read and approved at the next term will not render void a judgment so entered. An approval of the entries at any succeeding term, relates back to the time of the entry, and is as effectual as if given at that time: *Vanfleet v. Phillips*, 11-553.

A judgment entered in vacation is void, and the reading, approval and signing of the judgment entry at the next term of court does not make it valid. Such course is only allowable as to entries "authorized to be made

in vacation": *Townsley v. Morehead*, 9-565; *McClure v. Owens*, 21-133.

Though the record of the judgment is not read and approved until the term after it is made, nevertheless exceptions thereto must be taken, under § 2831, at the term when the judgment is entered: *The State v. Orwig*, 34-112.

The expiration of the term of a judge, before the approval and signing of the record, does not make judgments rendered by him void: *Tracy v. Beeson*, 47-155.

When amend-
ed.
R. § 2666.
C. § 51, § 1579.

SEC. 178. The record aforesaid is under the control of the court, and may be amended, or any entry therein expunged, at any time during the term at which it is made, or before it is signed by the judge.

During all the term, the record is under the control of the court, and at any time before adjournment an order of non-suit or a judgment by default may be set aside on proper showing: *Taylor v. Lusk*, 9-444.

Until the record is signed, it is not conclusive upon the court, as against a bill of exceptions subsequently signed: *Shepherd v. Brenton*, 15-84.

The discovery by the court of an error or mistake in its ruling is good

cause for amending or expunging the record thereof as herein provided: *Brace v. Grady*, 36-352; so a default, improperly entered, may thus be set aside without following the provisions of § 2871 as to setting aside defaults: *Boals v. Shules*, 29-507.

This section refers to a record made in a cause, and not to a total omission to make a record, which can be supplied at the succeeding term: *Tracy v. Beeson*, 47-155, 158.

SEC. 179. Entries made, approved, and signed at a previous term, can be altered only to correct an evident mistake.

R. § 2667.
C. '51, § 1580.

The power to change entries, on account of evident mistake, is not necessarily limited to the term next succeeding the one at which they were made. A correction in a particular case, held, proper under peculiar circumstances: *Hurley v. Du Buque G. L. & C. Co.*, 8-274.

Entries made at a previous term may be altered and corrected for mistake when it is clearly made to appear: *The State v. McComb*, 18-43, 48.

Where a verdict is returned but no judgment rendered thereon at that term, it is not error to render such judgment at the next term: *Shepard*

v. *Brenton*, 20-41.

This section does not deprive the court of the power to make a *nunc pro tunc* entry at a subsequent term, of a fact, such as consent of parties to trial by a certain method, etc.: *Buckwalter v. Craig*, 24-215; and a *nunc pro tunc* order showing certain facts in regard to the empanelling of a grand jury at a previous term, held, allowable: *The State v. Murzenmaier*, 24-87.

By analogy, the provisions of this section will be followed in the supreme court: *Roberts v. Corbin*, 26-315, 331.

SEC. 180. The judges of the district and circuit court in any district, may provide by general rule:

Judges make
rules.
R. §§ 2679-81.
C. '51, §§ 1580-
91.

1. That the time of filing pleadings or motions shall be other than provided in this code;

2. That issues in all, or a part of the counties in such district, shall be made up in vacation;

3. Prescribing penalties that shall follow the overruling or sustaining a motion or demurrer;

4. Adopting such other rules as they may deem expedient, not inconsistent with this code. Such rules shall be signed by said judges, and such number published as they deem expedient, and shall be distributed by the district judge as follows: To the secretary of state, to each of the judges of the supreme court, attorney-general, clerk of the supreme court, state library, and law department of the state university, one copy each, to be filed and preserved in the said several offices or departments; and the residue to the clerks of the district court in each county composing such district, in such proportion as such judge deems proper. The expense of publishing and distributing such rules shall be paid by the counties composing the district, as the judges may direct. Such rules may be revised and changed as often as the judges deem proper, and shall be published and distributed in the same manner, but shall not take effect until ninety days after their entry of record.

As to power to make rules, method of adoption, publication, etc., see *The State v. Ensley*, 10-149.

A rule of the circuit court in regard

to filing transcripts on appeals from justices upheld: *Pinders v. Yager*, 29-468.

Short-hand reporter.
14 G. A. ch's. 99, 100.

SEC. 181. The judge of the district or circuit court may appoint, whenever in the judgment of either of them it will expedite the public business, a short-hand reporter, who shall be well skilled in the art and competent to discharge the duties required, for the purpose of recording the oral testimony of witnesses in civil cases upon the request of either party thereto, and in all criminal cases which are tried upon indictment; and in other criminal cases and such other matters as the judge may direct; but the judge shall not so direct in any criminal case unless it shall satisfactorily appear to him that the interests of the state or defendant require the *separating [reporting]* of the testimony in said case; provided, the defendant in any criminal case may have the testimony therein reported without an order of the judge by first paying or securing to said reporter his fees for reporting therein.

[As amended by striking out all of the original section after the word "witnesses" in the fifth line, and inserting what is given as following that word; 18th G. A., ch. 1.5, § 1. For § 2 of that act see § 3777.]

Oath: removal.
Same.
14 G. A. ch. 100.
§§ 2, 4.

SEC. 182. Such reporter shall take an oath faithfully to perform the duties of his office, which shall be filed in the office of the clerk. He shall attend such sessions of the court as the judge may direct, and may be removed by the judge making the appointment for misconduct, incapacity, or inattention to duty.

Judgment in vacation.

SEC. 183. With consent of parties, actions, special proceedings, and other matters pending in the courts named in this chapter, may be taken under advisement by the judges, decided and entered of record in vacation, or at the next term; if so entered in vacation, they shall have the same force and effect from the time of such entry as if done in term time.

The consent of a party to a cause | not objecting thereto, held sufficient being determined in vacation, implied | to authorize such decision: *Myers v. Funk*, 51-92.

Circuit court a court of record.
12 G. A. ch. 86.
§§ 9, 11.

SEC. 184. The circuit court shall be held by the circuit judge, and be a court of record; shall have and use its own seal, having on the face thereof the words "circuit court" and the name of the county and state.

Judgment on verdict received after the opening of court in another county.
Ad. Sess. 14 G. A. ch. 12, § 1.

SEC. 185. In all judicial proceedings in any of the courts of this state where a jury trial has been commenced in any case during any term of court, and where such jury may agree upon a verdict, but not until after the time for holding court in some other county in the same district, and where the jury has agreed upon a verdict and reported the same after the opening of court in another county and judgment has been rendered thereon, then and in that case such judgment shall not be deemed invalid by reason of the time of receiving such verdict and the rendition of such judgment.

It not being specified to whom the jury are to return their verdict, held, | templated that such verdict must be received by him sitting as a court: *Tilton v. Swift*, 40-78.

In such cases judgment may be rendered at next term.
same, § 2.

SEC. 186. In cases provided for in the preceding section, where the verdict has been so received and judgment has not been rendered thereon, as provided for in said section, then the time of the coming in of such verdict shall be no legal objection

to the rendition of judgment thereon at the next term of the court in the county where such trial was had, but judgment shall then be rendered thereon; *provided*, there be no other good and sufficient reason why such judgment shall not then be rendered; then the time of the report of the verdict and the provisions of this section shall in all respects have a retrospective effect and Retrospective operation.

The provision that the section is to | tional: *Tilton v. Swift*, 40-78.
be retrospective is not unconstitu-

CHAPTER 6.

GENERAL PROVISIONS.

SECTION 187. No judge of any court of record shall practice as an attorney or counselor at law, or give advice in relation to any action pending, or about to be brought in any of the courts of this state. Judges cannot act as attorneys.

SEC. 188. All process issued by the clerk of the court shall bear date the day it is issued, to be attested in the name of the clerk who issued the same, and be under the seal of the court. Process.

SEC. 189. All judicial proceedings must be public, unless otherwise specially provided by statute, or agreed upon by the parties. Proceedings public.

See *Hobart v. Hobart*, 45-501, 504.

SEC. 190. A judge or justice is disqualified from acting as such, except by mutual consent of parties, in any case wherein he is a party or interested, or where he is related to either party by consanguinity or affinity within the fourth degree, or where he has been attorney for either party in the action or proceeding. But this section does not prevent them from disposing of any preliminary matter not affecting the merits of the case. Judge or justice: when disqualified.

SEC. 191. No court can be opened, nor any judicial business transacted on Sunday, except: Sunday.

1. To give instructions to a jury then deliberating on their verdict;
2. To receive a verdict, or discharge a jury;
3. To exercise the powers of a single magistrate in a criminal proceeding;
4. And such other acts as are provided by law.

To avoid a judgment, regular on its face, on the ground that it was rendered on Sunday, the evidence that it was so rendered should be clearly established, beyond the reason- able doubt naturally arising from the difficulty of establishing the precise time of a transaction: *Bishop v. Carter*, 29-165.

SEC. 192. Courts must be held at the places provided by law, where held, except for the determination of actions, special proceedings, and other matters not requiring a jury, when they may, by consent of the parties therein, be held at some other place. R. 1-2687.
C. 51, § 1597.

A trial at a place not within the county where the suit was pending, had by agreement of parties dur-

ing vacation, held binding: *O'Hagen v. O'Hagen*, 14-264.

CHAPTER 7.

OF THE CLERK OF THE DISTRICT AND CIRCUIT COURTS.

Of circuit court.

R. § 342.
C. 51, § 141.
12 G. A. ch. 86,
§ 10.

Official duty.
R. §§ 343, 2664.
C. 51, § 1577.

How designated.

12 G. A. ch.
134, § 2.

Records consist of.

R. § 345.

Books kept.

R. §§ 346, 3243.
9 G. A. ch. 26,
§ 116.

Record book.

Judgment docket.

Fee book.

SECTION 193. The clerk of the district court is, by virtue of his office, clerk of the circuit court.

SEC. 194. He shall keep his office at the county seat; shall attend the sessions of the district and circuit courts himself, or by deputy; keep the records, papers, and seals of both courts, and record their proceedings as hereinafter directed under the direction of the judges of each court respectively.

SEC. 195. The clerk of the district court shall, while acting as clerk of the circuit court, be known and designated as "clerk of the circuit court," and in all certificates and records relating to said court, signed by him, he shall so designate himself. The deputy of the clerk of the district court may perform any of the duties required by the clerk of the district court, to be performed in and for said circuit court; and may sign all certificates and records thereof, in the same manner and with the same force and effect as the clerk of the district court.

SEC. 196. The records of each court consist of the original papers constituting the causes adjudicated or pending in that court, and the books prescribed in the next section.

An affidavit for publication, when filed, becomes part of the record: *Bradley v. Jamison*, 46-68, 73.

As to supplying lost records, as for instance written testimony, by substitution, see *Loomis v. McKenzie*, 48-416.

SEC. 197. The clerk is required to keep the following books for the business of the district and circuit courts severally;

1. A book containing the entries of the proceedings of the court, which may be known as the "record book," and which is to have an index referring to each proceeding in each cause under the name of the parties, both plaintiff and defendant, and under the name of each person named in either party;

2. A book containing an abstract of the judgments, having in separate and appropriate columns the names of the parties, the date of the judgment, the damages recovered, costs, the date of the issuance and return of executions, with the entry of satisfaction and other memoranda; which book may be known as the "judgment docket," and is to have an index like that required for the record book;

3. A book in which to enter in detail the costs and fees in each action or proceeding under the title of the same, with an index

The judge's docket does not constitute a part of the records of the court, and it is doubtful whether an entry therein is competent evidence of an agreement as to mode of trial: *Rogers v. Morton*, 51-709.

like that required above, and which may be known as the "fee book;"

4. A book in which to enter the following matters in relation sale book. to any judgment under which real property is sold, entering them after the execution is returned—the title of the action, the date of the judgment, the amount of damages recovered, the total amount of costs, and the officer's return in full—which book may be known as the "sale book," and is to have an index like those required above;

5. A book in which to make a complete record when required by law; Complete rec-
ord.

6. A book to be called the "incumbrance book," in which the sheriff shall enter a statement of the levy of every attachment on real estate, as required by Part III of this code; Incumbrance
book.

7. A book to be known as the "appearance docket," with an index to the same, in which all actions, entered in said docket shall be indexed directly in the name of each plaintiff; and reversely in the name of each defendant therein; Appearance
docket.

8. A book in which an index of all liens in district or circuit courts shall be kept. Index of liens.

The entry and indexing of a judgment as against co-defendants | judgment as against co-defendants
ment, as A B v. C D *et al.* does not | of C D, whose names do not appear:
operate as notice to strangers of such | *Cummings v. Long*, 16-41.

SEC. 198. The clerk shall enter in said appearance docket, each suit that shall be brought in the court, numbering them consecutively in the order in which they shall have been commenced, which number shall not be changed during the further progress of the suit. In entering the suits, the clerk shall set out the full name of all the parties, plaintiffs and defendants, as contained in the petition, or as subsequently made parties by any pleading, proceeding, or order, and shall give the date of the filing of the petition. Appearance
docket.
^{9 G. A. ch. 26,}
²²

SEC. 199. When the original notice shall be returned to the office of the clerk, he shall enter in said docket so much of the same return thereon as to show who of the parties have been served therewith, and the manner and time of service. Same.
^{9 G. A. ch. 26,}
²³

SEC. 200. The clerk shall, immediately upon the filing thereof, make in the appearance docket a memorandum of the date of the filing of all petitions, demurrers, answers, motions, or paper of any other description in the cause; and no pleading of any description shall be considered as filed in the cause, or be taken from the clerk's office until the said memorandum is made. Same.
^{9 G. A. ch. 26,}
²⁴

SEC. 201. Immediately upon the sustaining or overruling of any demurser or motion; the striking out or amendment of any pleading; trial of the cause; rendition of the verdict; entry of judgment; issuing of execution, or any other act or thing done in the progress of the cause, the like memorandum thereof shall be made in said docket, giving the date thereof, and the number of the book and page of the record where the entry thereof shall have been made, it being intended that the appearance docket shall be an index from the commencement to the end of a suit. Same.
^{9 G. A. ch. 26,}
²⁵

SEC. 202. The district and circuit judges of any county, may, by a joint order under their hands, direct that the records and Records of both courts
kept.
^{12 G. A. ch. 86,}
²⁶

minutes of both courts be kept in one set of books. But all matters touching decedents' estates, wills, administrations, guardians and heirs, and all business relating thereto transacted in the circuit court, and also the record of marriage licenses, shall be kept separate, in proper books prepared for that purpose, as heretofore.

Report criminal returns.
R. § 349.
C. § 31, § 148.

SEC. 203. The clerk of the district court is required to report to the secretary of state, on or before the first Monday in November of each year, the number of convictions for all crimes and misdemeanors in that court in his county for the year preceding; and such report shall show the character of the offense and the sentence of punishment; the occupation of the convict, whether he can read and write, his general habits, and also the expenses of the county for criminal prosecutions during the year, including, but distinguishing, the compensation of the district attorney.

[For further provisions as to the report here required, see 18th G. A., ch. 22, inserted following § 378.]

Not act as attorney.
14 G. A. ch. 29.

SEC. 204. The clerk, or deputy clerk of the district court is prohibited from holding the office of justice of the peace; or practicing, directly or indirectly, as an attorney or solicitor in the district or circuit court.

CHAPTER 8.

OF THE DISTRICT ATTORNEY.

To appear for
a county.
L. § 374.

SECTION 205. The district attorney shall appear for the state and the several counties composing his district, in all matters in which the state or any such county may be a party or interested, in the district and circuit courts of his district, and before any judge on a writ of habeas corpus sued out by a person charged or convicted of a public offense within his district. When any of the above proceedings are taken from his district to the supreme court, he shall furnish to the attorney-general a brief, containing the substance thereof, and the questions therein involved, before the proceeding is set for hearing in the supreme court. He shall also appear for the state, or any county, in any proceedings brought to his district from another on change of place of trial. He may, in his discretion, appear before a magistrate at the preliminary hearing of a criminal case; but nothing herein contained shall prevent the board of supervisors from employing other counsel, in any case properly belonging to his duties, when they deem it necessary.

It is the duty of the district attorney to appear for the county, and it is his right to do so: *Clark v. Lyon Co.*, 37-469.

In the absence of the district attorney, the court may appoint a special prosecutor for the term. As to whether the person so appointed was entitled to compensation from the county, the supreme court was equally divid-

ed: *White v. Polk Co.*, 17-413.

The board of supervisors may employ counsel, in addition to the district attorney, to prosecute criminal cases: *Hopkins v. Clayton Co.*, 32-15; but the district attorney cannot, by employing or accepting the services of additional counsel, bind the county to pay such counsel: *Tuttle v. Louisa Co.*, 46-138.

SEC. 206. The district attorney shall, when requested, give his ^{Give opinion in writing.} opinion in writing, without fee, upon all questions of law submitted ^{R. § 375.} to him by any county officer within his district, which have reference to the official duty of such officer, and whenever requested by any such officer, he shall prepare proper drafts for contracts, forms, and other writings which may be wanted for the use of any county in his district, and he shall file in his office and preserve a copy of his opinions thus furnished.

SEC. 207. All moneys received by the district attorney belonging to the people of the state, or any county, shall, immediately ^{Pay over money.} upon the receipt thereof, be paid by him to the officer, who by law ^{R. § 376.} is entitled to the custody of the same.

CHAPTER 9.

OF ATTORNEYS AND COUNSELORS.

SECTION 208. All persons who by the laws heretofore in force were permitted to practice as attorneys and counselors, may continue to practice as such; and hereafter, any person twenty-one years of age, who is an inhabitant of this state, and who satisfies any court of record that he or she possesses the requisite learning, and is of good moral character, may, by such court, be licensed to practice as an attorney and counselor in all the courts of the state, upon taking an oath to support the constitution of the United States and of this state, and to faithfully discharge the duty of an attorney and counselor of the courts of the state according to the best of his or her ability.

SEC. 209. Graduates of the law department of the Iowa State University, shall be admitted by any court of record to practice as attorneys and counselors in all the courts of the state upon the production of their diploma and taking the oath prescribed in the preceding section.

SEC. 210. Any practicing attorney of another state, having professional business in the courts of this state, may be admitted to practice in either of such courts upon taking the oath aforesaid.

SEC. 211. It is the duty of an attorney and counselor:

1. To maintain the respect due to the courts of justice and judicial officers;
2. To counsel or maintain no other actions, proceedings, or defenses than those which appear to him legal and just, except the defense of a person charged with a public offense;
3. To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never to seek to mislead the judges by any artifice or false statement of fact or law;
4. To maintain inviolate the confidence, and, at any peril to himself, to preserve the secret of his client;

5. To abstain from all offensive personalities, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged;

6. Not to encourage either the commencement or continuance of an action or proceeding from any motive of passion or interest;

7. Never to reject, for any consideration personal to himself, the cause of the defenseless or the oppressed.

When disbarred.
R. § 2705.
C. 51, § 1615.

SEC. 212. An attorney and counselor who is guilty of deceit or collusion, or consents thereto, with intent to deceive a court, or judge, or a party to an action or proceeding, is liable to be disbarred, and shall forfeit to the injured party treble damages, to be recovered in a civil action.

See § 217.

Power: authority.
R. § 2706.
C. 51, § 1616.

SEC. 213. An attorney and counselor has power:

1. To execute in the name of his client a bond, or other written instrument, necessary and proper for the prosecution of an action or proceeding about to be or already commenced; or for the prosecution or defense of any right growing out of an action, proceeding, or final judgment rendered therein;

2. To bind his client to any agreement, in respect to any proceeding within the scope of his proper duties and powers; but no evidence of any such agreement is receivable, except the statement of the attorney himself, his written agreement signed and filed with the clerk, or an entry thereof upon the records of the court;

3. To receive money claimed by his client in an action or proceeding during the pendency thereof, or afterwards, unless he has been previously discharged by his client, and upon payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment.

Under ¶ 2, held, that an entry upon the records which was thus made after the agreement was disputed, and upon the strength of testimony by affidavits, was not such a record as here contemplated: *Hiller v. Landis*, 44-223.

The facts appearing from an affidavit of the attorney of a party, held sufficient to establish implied consent to the determination of a cause in vacation under § 183: *Myers v. Funk*, 51-92.

May be required to prove authority.
R. § 2707.
C. 51, § 1617.

SEC. 214. The court may, on motion, for either party and on the showing of reasonable grounds therefor, require the attorney for the adverse party, or for any one of the several adverse parties, to produce, or prove by his own oath or otherwise, the authority under which he appears, and, until he does so, may stay all proceedings by him on behalf of the parties for whom he assumes to appear.

The showing to require an attorney to prove his authority | cident in a particular case: *Savery v. Savery*, 8-217.

Lien: extent of.
R. § 2708.
C. 51, § 1618.
13 G. A. ch. 167,
§ 2.

SEC. 215. An attorney has a lien for a general balance of compensation upon:

1. Any papers belonging to his client, which have come into his hands in the course of his professional employment;

2. Money in his hands belonging to his client;

3. Money due his client in the hands of the adverse party, or attorney of such party, in an action or proceeding in which the attorney claiming the lien was employed, from the time of giving

notice in writing to such adverse party, or attorney of such party, if the money is in the possession or under the control of such attorney, which notice shall state the amount claimed, and, in general terms, for what services.

4. After judgment in any court of record, such notice may be given and the lien made effective against the judgment debtor, by entering the same in the judgment docket opposite the entry of the judgment.

An attorney's lien does not attach upon money due his client in the hands of the adverse party, until notice is given to such party, therefore, held, that the right to set off a judgment existing in favor of the adverse party against the client before notice of the attorney's lien, was not subject to such lien. Whether such right of set-off may be taken advantage of as against the attorney's lien, where it does not arise until after notice of such lien, quare: *Hurst v. Sheets*, 21-501. (This case was under Rev. § 2708, which did not contain a provision similar to ¶ 4 of this section.)

To entitle the attorney to a lien, nothing need be done but notify the adverse party as here specified. A party cannot avoid such lien by unconditionally paying the money to the clerk; but he may pay it to the clerk to be held by him subject to such lien: *Fisher v. City of Oskaloosa*, 28-381.

The parties may settle without the consent of the attorneys, and without first paying their fees, unless notice of an attorney's lien has been given: *Casir v. Sargent*, 7-317.

The lien of an attorney upon money

due his client, in the hands of the adverse party, attaches from the time of giving notice to such party, and his lien will not be postponed to a subsequent garnishment: *Myers v. McHugh*, 16-335.

The notice of the lien, to bind the adverse party, must be in writing: *Phillips v. Germon*, 43-101.

The lien of an attorney is for the money due his client, in the hands of the adverse party, and where the attorney perfected the title of his client in real property attached in the action, and thereby satisfied the judgment as against the adverse party, held, that the entry of his lien in the judgment docket did not preserve it upon such property in the hands of a purchaser from his client: *Cowen v. Boone*, 48-350.

After the entry of the notice in the judgment docket, the attorney acquires an interest in the judgment, and may, by proper proceedings, have the same enforced to the extent of such interest. His interest cannot be divested by a discharge of the judgment by the parties, or by their consenting that it be set aside: *Brainard v. Elwood*, 54-80.

SEC. 216. Any person interested may release such lien, by executing a bond in a sum double the amount claimed, or in such sum as may be fixed by a judge, payable to the attorney, with security to be approved by the clerk of the supreme or district court, conditioned to pay any amount finally found due the attorney for his services, which amount may be ascertained by suit on the bond. Such lien will be released, unless the attorney, within ten days after demand therefor, furnishes any party interested a full and complete bill of particulars of the services and amount claimed for each item, or written contract with the party for whom the services were rendered.

[The original on file in the secretary's office has the words "files with the clerk," instead of "furnishes any party interested" in the eight line. The change was probably made by the editor, as the latter expression is that used in the code commissioners' report.]

The filing of the bond discharges,

not only the lien of the attorney on the judgment, but any lien which he may have under the preceding section. The provisions of § 226 do not apply to a case of this kind, and after

How released
R. § 2709.
C. '51, § 1619.

4

the filing of the bond provided in this section and release of the attorney's lien, he cannot retain such lien by filing a bond as there provided: *Cross v. Ackley*, 40-493.

License revoked:
R. § 2710.
C. '51, § 1620.

SEC. 217. Any court of record may revoke or suspend the license of an attorney or counselor at law to practice therein, and a revocation or suspension in one county operates to the same extent in the courts of all other counties.

The court cannot revoke or suspend the license of an attorney except after proceedings are commenced for that purpose as hereinafter provided, and the party has had his day in court. It cannot be done summarily as a punishment for contempt: *The State v. Start*, 7-499.

Causes for.
R. § 2711.
C. '51, § 1621.

SEC. 218. The following are sufficient causes for revocation or suspension:

1. When he has been convicted of a felony, or of a misdemeanor involving moral turpitude, in either of which cases the record of conviction is conclusive evidence;
2. When he is guilty of a wilful disobedience or violation of the order of the court, requiring him to do or forbear an act connected with, or in the course of his profession;
3. For a willful violation of any of the duties of an attorney or counselor as hereinbefore prescribed;
4. For doing any other act to which such a consequence is, by law, attached.

An attorney may be punished under ¶ 2 for disobedience to an order of court to pay over money to his client as provided in § 2906: *Cross v. Ackley*, 40-493, 498.

Proceedings for.
R. § 2712.
C. '51, § 1622.

SEC. 219. The proceedings to remove or suspend an attorney may be commenced by the direction of the court, or on motion of any individual. In the former case, the court must direct some attorney to draw up the accusation; in the latter, the accusation must be drawn up and sworn to by the person making it.

Proceedings to disbar an attorney are to be conducted as special proceedings: *The State v. Clarke*, 46-155.

Same.
R. § 2713.
C. '51, § 1623.

SEC. 220. If the court deem the accusation sufficient to justify farther action, it shall cause an order to be entered requiring the accused to appear and answer on a day therein fixed, either at the same or a subsequent term, and shall cause a copy of the accusation and order to be served upon him personally.

Trial.
R. § 2714.
C. '51, § 1624.

SEC. 221. To the accusation he may plead or demur, and the issues joined thereon shall, in all cases, be tried by the court, all the evidence being reduced to writing, filed and preserved.

Judgment.
R. § 2715.
C. '51, § 1625.

SEC. 222. If the accused plead guilty, or fail to answer, the court shall proceed to render such judgment as the case requires.

Appeal.
R. § 2716.
C. '51, § 1626.

Sec. 223. In case of a removal or suspension being ordered by a district or circuit court, an appeal therefrom lies to the supreme court, and all the original papers, together with a transcript of the record, shall thereupon be transferred to the supreme court, to be there considered and finally acted upon. A judgment of acquittal by the district or circuit court is final.

Misdemeanor when guilty.
R. § 2717.
C. '51, § 1627.

SEC. 224. An attorney who receives the money or property of his client in the course of his professional business, and refuses to pay or deliver it in a reasonable time after demand, is guilty of a misdemeanor.

Exception.
R. § 2718.
C. '51, § 1628.

SEC. 225. When the attorney claims to be entitled to a lien upon the money or property, he is not liable to the penalties of the preceding section, until the person demanding the money

proffers sufficient security for the payment of the amount of the attorney's claim when it is legally ascertained.

SEC. 226. Nor is he in any case liable as aforesaid, provided he gives sufficient security that he will pay over the whole, or any portion thereof, to the claimant when he is found entitled thereto. Same.
R. § 2719.
C. 51, § 1629.

The bond here provided is only to | lien which is discharged by the bond
exempt an attorney from proceedings | referred to in § 216: *Cross v. Ackley*,
against him under § 224, and is not | 40-493.
designed to enable him to retain a |

CHAPTER 10.

OF JURORS.

SECTION 227. All qualified electors of the state of good moral character, sound judgment, and in full possession of the senses of hearing and seeing, are competent jurors in their respective counties. Who competent.
R. § 2720.
C. 51, § 1630.

Under certain facts *held*, that a juror was incompetent as not being a qualified elector; also *held* that an objection to the competency of a juror should be interposed when he is sworn, but if not then known, may be interposed after verdict: *The State v. Groome*, 10-308.

SEC. 228. The following persons are exempt from liability to act as jurors: All persons holding office under the laws of the United States or of this state; all practicing attorneys, physicians, and clergymen; all acting professors or teachers of any college, school, or other institution of learning; and all persons disabled by bodily infirmity, or over sixty-five years of age. Who exempt.
R. § 2721.
C. 51, § 1631.

The exemption is a personal privilege, which may be waived, and is not a ground for challenge. See § 2777 and note.

Sec. 229. Any person may also be excused from serving on a jury when his own interests or those of the public will be materially injured by his attendance, or when the state of his own health, or the death, or the sickness of a member of his family, requires his absence. When excused.
R. § 2722.
C. 51, § 1632.

That jurors have been excused on their own statements, not under oath, is not ground of objection by the defendant, in a criminal case, and he cannot have an attachment issued to compel the attendance of those so excused: *The State v. Ostrander*, 18-435, 448.

SEC. 230. Unless the judge otherwise orders, jurors shall be summoned to appear at ten o'clock a. m. of the second day of the term, at which time they shall be called and all excuses heard and determined by the court. If any person summoned fail to appear without sending a sufficient excuse, the court shall issue a rule returnable at that or the succeeding term, requiring him to appear, and show cause why he should not be fined for contempt, and unless he renders a sufficient excuse for such failure, the court may fine him in any amount not exceeding ten dollars, and shall require him to pay the costs, and stand committed until the fine and costs are paid. When to attend: liability for failure.
R. § 2735.
C. 51, § 1645.

Number. SEC. 231. The number of grand jurors shall be fifteen, and in counties containing less than fifteen thousand inhabitants as given by the last preceding census, the trial jurors shall consist of the same number, unless the judge otherwise orders. But in counties containing a greater number of inhabitants, the number of trial jurors shall be twenty-four.

Failure of trial jurors to attend.
R. § 2737.
C. '51, § 1647.

SEC. 232. Should there not be the number of trial jurors in attendance, as provided in the preceding section, by reason of a failure of the persons summoned to attend, or because excused as provided in section two hundred and thirty of this chapter, the requisite number of persons to supply the deficiency shall be drawn in the same manner as provided in section two hundred and forty and two hundred and forty-one of this chapter. The persons so drawn shall be forthwith summoned to appear, and serve as trial jurors during the term.

Discharge of.

SEC. 233. If, in the judgment of the court, the business of the term does not require the attendance of all, or a portion of the trial jurors, they, or such portion as the court deems proper, may be discharged. Should it afterward appear that a jury is required, the court may direct them to be resummoned, or empanel a jury from the bystanders.

Lists.
R. § 2723.
C. '51, § 1633.

SEC. 234. Two jury lists, one consisting of seventy-five persons to serve as grand jurors, and one consisting of one hundred and fifty persons or, in counties containing more than twenty thousand inhabitants, of two hundred and fifty persons, to serve as trial jurors, and composed of persons competent and liable to serve as jurors, shall annually be made in each county from which to select jurors for the year commencing on the first day of January.

But one jury list of petit jurors is contemplated, from which the juries for both the district and circuit courts are to be drawn: *The State v. Lawrence*, 38-51.

That eighty-five instead of seven-

ty-five names were returned from which to select the grand jury, and the extra names were stricken off before the grand jury was drawn, held, not an irregularity: *The State v. Knight*, 19-94.

Same.
R. § 2724.
C. '51, § 1634.
13 G. A. ch.,
167, § 5.

How selected.
R. § 2725.
C. '51, § 1635.

SEC. 235. Should there be less than the required number of such persons in any county, the list shall comprise all those who answer the above description in the same proportion.

SEC. 236. On or before the first Monday in September in each year, the county auditor shall apportion the number to be selected from each election precinct, as nearly as practicable in proportion to the number of votes polled therein at the last general election, and shall deliver a statement thereof to the sheriff.

Sheriff to serve notice.
R. § 276.
C. '51, § 636.

SEC. 237. The sheriff shall cause a written notice to be delivered to one of the judges of election in each precinct of the county, on or before the day of the general election in each year, informing them of the number of jurors apportioned for the ensuing year to their respective precincts.

Duty of Judge of election.
R. §§ 2727-8.
C. '51, § 167-8.
13 G. A. ch. 3;
ch. 167, § 4.

SEC. 238. The judges shall thereupon make the requisite selection, and return lists of names as selected to the auditor with the returns of the election, and in case the judges of election shall fail to make and return said lists as herein required, the county canvassers shall, at the meeting to canvass the votes polled in the county, make such lists for the delinquent precincts, and the

auditor shall file said lists in his office and cause a copy thereof to be recorded in the election book.

A failure to record the names returned on the grand jury list does not invalidate proceedings of the grand jury drawn therefrom: *The State v. Knight*, 19-94.

Where the judges of election and county canvassers each failed to make out and return names of jurors for one election precinct, but two names were supplied by the board of supervisors, which two jurors, however, were not drawn upon the grand jury, held, that the irregularity did not vitiate an indictment: *The State v.*

Brandt, 41-593.

No formal certificate of the judges to the lists so returned is necessary, though it would be proper. Where the record in the record book shows due and proper selection, the presumption is that such record was the result of the list duly made. When the law has been substantially complied with, an indictment should not be set aside for slight irregularities in such matters: *The State v. Ansalem*, 15-44.

SEC. 239. Grand jurors shall be selected for the first term in the year at which jurors are required, commencing next after the first day of January in each year, and shall serve for one year. Trial jurors shall be selected for each term wherein they are required; but no person shall be required to attend as a trial juror more than two terms in the same year, and in counties containing a population of more than five thousand inhabitants, it shall be a cause of challenge that the person has served on a jury in a court of record within one year, unless he be a member of the regular panel.

That a juror not on the regular panel has served on the jury within one year is cause for challenge: *Barnes v. Town of Newton*, 46-567.

SEC. 240. At least twenty days prior to the first day of any term at which a jury is to be selected, the auditor, or his deputy, must write out the names on the list aforesaid which have not been previously drawn as jurors during the year, on separate ballots, and the clerk of the district court, or his deputy, and sheriff, or his deputy, having compared said ballots with the lists, and corrected the same if necessary, shall place the ballots in a box provided for that purpose.

[As amended by 17th G. A., ch. 184, inserting the words "or his deputy" after "sheriff."]

Before the section was amended, held, that it not being provided that the deputy sheriff might act in place of the sheriff, a drawing in which he so acted, would be invalid: *Dutell v. The State*, 4 Gr. 125; *The State v. Brandt*, 41-593, 602.

SEC. 241. After thoroughly mixing the same, the clerk, or his deputy, shall draw therefrom the requisite number of jurors to serve as aforesaid, and shall, within three days thereafter, issue a precept to the sheriff, commanding him to summon the said jurors to appear before the court as provided in section two hundred and thirty of this chapter.

SEC. 242. The sheriff shall immediately obey such precept, and, on or before the day for the appearance of said jurors, must make return thereof, and on failure to do so, without sufficient cause, is liable to be fined for a contempt in any amount not exceeding fifty dollars.

Service of precept may be made by appointed under § 341: *The State v. Arthur*, 39-631.

Term of service.
R. 2729.
C. 51, § 1639.
Ex. S. 8 G. A.
ch. 6, § 1.

Challenge.
13 G. A. ch. 167,
§ 5.

Auditor writes
names.
R. § 2730.
C. 51, § 1640,
9 G. A. ch. 5.
13 G. A. ch. 3,
ch. 167, § 6.

Clerk to draw:
Issue precept.
R. § 2731, 1643.
C. 51, §§ 1641,
1643.
9 G. A. ch. 5.
13 G. A. ch. 167,
§ 8.

Sheriff to serve.
R. § 2734.
C. 51, § 1644,

Grand jurors to attend.
R. § 2736.
C. '51, § 1646.

When precept is set aside.
R. § 2738.

SEC. 243. Except when required at a special term which has been called in vacation, the grand jury need not be summoned after the first term, but must appear at the next term without summons, under the same penalty as though they had been regularly summoned.

SEC. 244. Where, from any cause, the persons summoned to serve as grand or trial jurors fail to appear, or when from any cause the court shall decide that the grand or trial jurors have been illegally elected or drawn, the court may set aside the precept under which the jurors were summoned, and cause a precept to be issued to the sheriff commanding him to summon a sufficient number of persons from the body of the county, to serve as jurors at the term of court then being holden, which precept may be made returnable forthwith, or at some subsequent day of the term, in the discretion of the court.

This section does not apply to cases where a sufficient number of grand jurors fail to appear as contemplated in § 4256: *The State v. Pierce*, 8-231.

Where the list of jurors was accidentally destroyed, it was held proper for the court to order a new precept. Under such precept, commanding the sheriff to summon a new jury from

the body of the county, *held*, that a jury taken from ten out of twenty townships in the county was sufficient: *The State v. Arthur*, 39-631.

The fact that the jury is filled up by persons specially summoned, is not a valid ground of objection when no abuse of discretion on the part of the court is shown: *Emerick v. Sloan*, 18-139.

In payment of jurors.
R. § 2739.
C. '51, § 1649.

Auditor to issue warrant on clerk's certificate.

SEC. 245. At the close of each term the clerk of the court must make out a certificate to each juror of the amount to which he is entitled for his services, which certificate shall authorize the county auditor to issue a warrant to each juror for the said amount on the county treasurer without the same being audited by the board of supervisors.

[The original section repealed and the foregoing substituted; 15 G. A., ch. 16.]

CHAPTER 11.

OF SECURITIES AND INVESTMENTS.

Form of.
R. § 4113.
C. '51, § 2505.

For whose benefit.
R. § 4114.
C. '51, § 2506.

SECTION 246. Whenever security is required to be given by law, or by order on judgment of a court, and no particular mode is prescribed, it shall be by bond.

SEC. 247. Such security, when not otherwise directed, may, if for the benefit of individuals, be given to the party intended to be thereby secured. If in relation to the public matters concerning the inhabitants of one county or part of a county, it may be made payable to the county; if concerning the inhabitants of more than one county, it may be made payable to the state. But a mere mistake in these respects will not vitiate the security.

The giving of a bond to the "people of Woodbury county," instead of to the county, *held* not such a mistake as to vitiate the security: *Charles v. Haskins*, 11-329.

SEC. 248. No defective bond or other security, or affidavit, in any case, shall prejudice the party giving or making it, provided it be so rectified within a reasonable time after the defect is discovered, as not to cause essential injury to the other party.

So held in case of appeal bond on appeal from a justice appeal from the county court: *Mitchell v. Goff*, 18-424, and held applicable to a bond on appeal, from a justice of the peace: *Brock v. Manatt*, 1-128.

SEC. 249. The surety in every bond provided for by this code must be a resident of this state, and worth double the sum to be secured beyond the amount of his debts, and have property liable to execution in this state equal to the sum to be secured. Where there are two or more sureties in the same bond, they must, in the aggregate, have the qualification prescribed in this section.

SEC. 250. The officer whose duty it is to take a surety in any bond provided for by this code, shall require the person offered as surety to make affidavit of his qualification, which affidavit may be made before such officer or other officer, authorized to administer oaths. The taking of such an affidavit, shall not exempt the officer from any liability to which he might otherwise be subject for taking insufficient security.

Taking the affidavit of a surety does not exempt an officer from liability for accepting insufficient security: *Hubbard v. Steitzer*, 47-681. As to affidavit required from surety on stay bond, see § 3062.

SEC. 251. Where investments of money are directed to be made, and no mode of investment is pointed out by statute, they must be made in the stocks or bonds of this state, or of those of the United States, or upon bond or mortgage of real property of the clear unencumbered value of at least twice the investment.

SEC. 252. When such investment is made by order of any court, the security taken shall in no case be discharged, impaired, or transferred, without an order of the court to that effect entered on the minutes thereof.

SEC. 253. The clerk or other person appointed in such cases to make the investment, must receive all moneys as they become due thereon, and apply or reinvest the same under the direction of the court, unless the court appoint some other person to do such acts.

SEC. 254. Once in each year, and oftener if required by the court, the person so appointed must, on oath, render to the court an account in writing of all moneys so received by him, and of the application thereof.

SEC. 255. When it is admitted by the pleading or examination of a party that he has in his possession, or under his control, any money or property capable of delivery, which is in any degree the subject of litigation, and which is held by him as trustee for another party, the court, or judge thereof, may order the same to be deposited in the office of the clerk, or delivered to such party with or without security, subject to the farther direction of the court; or may order such money to be deposited in a bank with the consent of the parties in interest, to the credit of the court in which the action is pending, and the same shall be paid out by such bank, only upon the check of the clerk annexed to the certified order of the court directing such payment.

Remedy when defective.
R. § 4119.
C. '51, § 2511.

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Surety: resi-
dent of state.
R. § 4126.

Officer may re-
quire affida-
vit.
R. § 4123.

As to affidavit required from surety
on stay bond, see § 3062.

Investments:
how made.
R. § 4115.
C. '51, § 2507.

When dis-
charged.
R. § 4116.

C. '51, § 2508.

Re-investment.
R. § 4117.
C. '51, § 2509.

Account: when
rendered.
R. § 4118.
C. '51, § 2510.

Delivery of
property or de-
posit of money.
R. § 4116.

How paid out.

Obedience
compelled.
R. § 317.

SEC. 256. Whenever a court, or judge, in the exercise of its or his authority, has ordered the deposit or delivery of money or other property, and the order is disobeyed, the court, besides punishing the disobedience, may make an order requiring the sheriff to take the money or property, and deposit or deliver it in conformity with the directions of the court or judge.

Sheriff: power.
R. § 318.

SEC. 257. The sheriff has the same power in such cases as when acting under an order for the delivery of personal property.

CHAPTER 12.

OF NOTARIES PUBLIC.

For what time
appointed.
R. § 195.
C. 51, § 78.

SECTION 258. The governor may appoint and commission one or more notaries public in each county, and may at any time revoke such appointment. The commissions of all notaries public heretofore, or hereafter, issued prior to the fourth day of July, A. D. 1876, shall expire on that day, and commissions subsequently issued shall be for no longer period than three years, and all such commissions shall expire on the fourth day of July in the same year. The secretary of state shall, on or before the first day of June, A. D. 1876, and every three years thereafter, notify each notary when his commission will expire.

A notary public is a public officer, *facto* notary could not be suppressed and the acts of one who is such, *de jure*, cannot be collaterally assailed; therefore *Keeney v. Leas*, 14-464. *held*, that a deposition taken by a *de*

What done be-
fore commis-
sion issued.
R. § 197, 100,
207-9.
C. 51, § 80.
12 G. A. ch. 60.

SEC. 259. Before any such commission is delivered to the person appointed, he shall:

1. Procure a seal on which shall be engraved the words "notarial seal" and "Iowa," with his surname at length, and at least the initials of his christian name;

2. Execute a bond to the state of Iowa in the sum of five hundred dollars, conditioned for the true and faithful execution of the duties of his office, which bond shall be approved by the clerk of the district court of the proper county;

3. Write on said bond, or a paper attached thereto, his signature, and place thereon a distinct impression of his official seal;

4. File such bond with attached papers, if any, in the office of the secretary of state;

5. Remit to such secretary the fee required by law;

When the secretary of state is satisfied that the foregoing particulars have been fully complied with, he shall deliver the commission to the person appointed.

Although the statute does not in terms prescribe that the acts of the notary shall be authenticated by his seal, there could have been no other purpose in requiring him to procure a seal, and *held* that a wafer with the name, &c., of the notary written

thereon was not a sufficient authentication: *Stephens v. Williams*, 46-540, and see notes to § 268.

The acts of the notary should be authenticated, both by his seal and his signature: *Tunis v. Withrow*, 10-305.

SEC. 260. When the secretary of state delivers the commission to the person appointed, he shall make a certified copy thereof and forward the same to the clerk of the district court of the proper county, who shall file and preserve the same in his office, and it shall be deemed sufficient evidence to enable such clerk to certify that the person so commissioned is a notary public during the time such commission is in force. Secretary to forward copy

SEC. 261. Should the commission of any person appointed notary public be revoked by the governor, the secretary of state shall immediately notify such person, and the clerk of the district court of the proper county, through the mail. Revocation.

SEC. 262. Each notary is invested with the powers and shall perform the duties which pertain to that office by the custom and law of merchants. R. § 198.
C. '51, § 81.

Acts of notary, how authenticated: | see notes to § 259.

SEC. 263. Every notary public is required to keep a true record of all notices given or sent by him, with the time and manner in which the same were given or sent, and the names of all the parties to whom the same were given or sent, with a copy of the instrument in relation to which the notice is served, and of the notice itself. Keep record of notices sent.
R. § 198.
C. '51, § 85.

SEC. 264. On the death, resignation, or removal from office of any notary, his records, with all his official papers, shall, within three months therefrom, be deposited in the office of the clerk of the district court in the county for which such notary shall have been appointed; and if any notary, on his resignation or removal, neglects for three months so to deposit them, he shall be held guilty of a misdemeanor and be punished accordingly, and be liable in an action to any person injured by such neglect; and if an executor or administrator of a deceased notary willfully neglects for three months after his acceptance of that appointment, to deposit the records and papers of a deceased notary which came into his hands, in said clerk's office, he shall be held guilty of a misdemeanor and punished accordingly. Vacancy: records to be deposited: when.
R. § 201.
C. '51, § 85.

SEC. 265. If a notary remove his residence from the county for which he was appointed, such removal shall be taken as a resignation. Removal: resignation.
R. § 203.
C. '51, § 86.

SEC. 266. Each clerk aforesaid shall receive and safely keep all such records and papers of the notary in the cases above named, and shall give attested copies of them under the seal of his court, for which he may demand such fees as by law may be allowed to the notaries, and such copies shall have the same effect as if certified by the notary. Duty of clerk.
R. § 204.
C. '51, § 87.

CHAPTER 13.

OF COMMISSIONERS IN OTHER STATES.

How appointed.
ed: power.
13 G. A. ch. 44, § 1.

SECTION 267. The governor may appoint and commission in each of the United States and territories, one or more commissioners, to continue in office for the term of three years from the date of commission, unless such appointment shall be sooner revoked by the governor; such commissioners, when qualified as hereinafter provided, shall be empowered to administer oaths, take depositions and affidavits to be used in the courts of this state, and to take acknowledgments or proof of deeds and other instruments to be recorded and used in this state.

Seal.
10 G. A. ch. 119.
13 G. A. ch. 44, § 4.

SEC. 268. Each commissioner, exercising the authority conferred upon him by this chapter, shall have an official seal, on which shall be engraved the words "COMMISSIONER FOR IOWA," with his surname at length, and at least the initials of his christian name; also the name of the state in which he has been commissioned to act, which seal must be so engraved as to make a clear impression on wax or wafer.

The certificate of such commissioner held not to be sufficiently authenticated by his seal, when the word "Iowa" was written in the body of | the seal instead of being impressed upon the paper as here contemplated: *Gage v. D. & P. R. Co.* 11-310, and see notes to § 259.

Effect of signature and seal.
13 G. A. ch. 44, § 5.

SEC. 269. A signature and impression of such seal of any commissioner, qualified as herein provided, and corresponding with that on file in the office of the secretary of state, shall be entitled to the same credit as evidence in the courts and public offices of this state, as the signature and seal of a clerk of the district court or notary public of this state.

Compensation.
Same. § 6.

SEC. 270. Such commissioner is authorized to demand for his services the same fee as may be allowed for similar services by the laws of the state in which he is to exercise his office.

Effect of local acts.
Same. § 2.

SEC. 271. Oaths administered by any such commissioner, affidavits and depositions taken by him, and acknowledgments as aforesaid certified by him over his official signature and seal, are made as effectual in law to all intents and purposes, as if done and certified by a clerk of the district court or justice of the peace of this state.

As to the requisites of the seal, see | § 268 and notes.

Qualification.
Same. § 3.

SEC. 272. Before such commissioner can perform any of the duties of his office, he is required to take and subscribe an oath that he will support the constitution of the United States and the constitution of the state of Iowa, and that he will faithfully perform the duties of such office; which oath shall be taken and subscribed before some judge or clerk of a court of record in the state in which the commissioner is to exercise his appointment, and certified under the hand of the person taking it, and the seal of his court, or before a duly authorized commissioner for Iowa, resident in said state, which certificate shall be filed in the office of the secretary of state of this state, and on which shall be the official signature and a clear impression of the official seal of such commissioner.

SEC. 273. The secretary of state, upon the reception of the certificate as provided in section two hundred and sixty-nine of this chapter, shall examine the same, and if this chapter has been strictly complied with, it shall be his duty to forward to said commissioner a certificate properly attested, that he has been duly commissioned as a commissioner for Iowa; and that he is duly qualified as required by the laws of Iowa authorizing the appointment of commissioners in other states; and it shall be the further duty of the secretary of state to forward a duplicate of said certificate to the secretary of the state in which said commissioner may have been appointed.

SEC. 274. The secretary of state shall cause to be published with the session laws of each general assembly, a full and complete list of all commissioners for Iowa who are duly qualified, and whose commissions do not expire on or before the fourth day of July of the year in which such publication is made, which list shall give the post office address, date of qualification, and date of expiration of the commission of each commissioner.

SEC. 275. Commissioners of the like nature appointed in this state, under the authority of any other of the United States or territories, are hereby invested with the authority of a justice of the peace to issue subpoenas, requiring the attendance of witnesses before them to give their testimony by deposition or affidavit, in any matter in which such deposition or affidavit may be taken by the law of such other state, and they are also authorized to administer oaths in any matter in relation to which they are required or permitted by such law of the other states; and false swearing in such cases is hereby made subject to the penal laws of this state relating to perjury; provided that such commissioner shall cause to be filed in the office of the secretary of state a certificate of the secretary of the state or territory for which he claims to act, that he is properly appointed and qualified as required by the laws of said state, and has in his possession a certificate that this section has been complied with.

SEC. 276. The secretary of state shall keep in his office a complete record of all appointments made by the governor, pursuant to the provisions of this chapter.

Duty of secretary of state.
Same. § 8.

List of to be published.
Same. 11.

Power of commissioners of other states in this state.
Same. § 12.

Record of appointments to be kept.
Same. § 13.

CHAPTER 14.

OF THE ADMINISTRATION OF OATHS.

SECTION 277. The following officers are authorized to administer oaths, and take and certify the acknowledgment of instruments in writing:

- Each judge of the supreme court;
- Each judge of the district court;
- Each judge of the circuit court;
- The clerk of the supreme court;

Who authorized.
R. 7 & 201, 1843,
2084, 3201.
C. '51, 2 & 979,
1594, 1865.
11 G. A. ch. 5.
13 G. A. ch. 116.

Each clerk of the district court as such, or as clerk of the circuit court;

Each deputy clerk of the district and circuit courts;

Each county auditor;

Each deputy county auditor;

Each sheriff and his deputies, in cases where they are authorized by law to select commissioners or appraisers, or to empanel jurors for the view or appraisement of property, or are directed as an official duty to have property appraised, or take the answers of garnishees;

Each justice of the peace within his county;

Each notary public within his county;

The governor of the state, the secretary of state, the auditor of state, and the treasurer of state, are authorized to administer oaths in any matter pertaining to the business of their respective offices, or that may come before them for consideration and action as members of the executive council.

[As amended by adding the last sentence; 18th G. A., ch. 62.]

Affirmation.
R. 1844.
C. '51, § 980.

SEC. 278. Persons conscientiously opposed to swearing may affirm, and shall be subject to the penalties of perjury as in case of swearing.

TITLE IV.

RELATING TO COUNTY, TOWNSHIP, TOWN, AND CITY GOVERNMENT.

CHAPTER 1.

OF COUNTIES.

SECTION 279. Each county is a body corporate for civil and political purposes only, and as such may sue and be sued; shall keep a seal such as provided by law; may acquire and hold property and make all contracts necessary or expedient for the management, control, and improvement of the same; and, for the better exercise of its civil and political powers, may make any order for the disposition of its property, and may do such other acts and exercise such other powers as may be allowed by law.

Although clothed with corporate powers, counties stand low down in the scale of corporate existences, and are reckoned as *quasi* corporations, as distinguished from municipal corporations, and they are held to a much less extended liability than the

latter. They are not liable to an action by a private party for negligence of their officers in respect to highways, unless the statute has expressly created such liability: *Soper v. Henry Co.*, 26-264.

SEC. 280. Counties bounded by a stream or other water, have concurrent jurisdiction over the whole of the waters lying between them.

RE-LOCATION—COUNTY SEAT.

SEC. 281. Whenever the citizens of any county desire a re-location of their county seat, they may petition their board of supervisors respecting the same at any regular session.

It is not error for the board to refuse to entertain a petition of this kind, presented at an adjourned ses-

sion: *Ellis v. Board of Supervisors, &c.*, 40-301.

SEC. 282. Such petition shall designate the place at which the petitioners desire to have the county seat re-located, and shall be signed by none but legal voters of said county, and shall be accompanied by affidavits sufficient to satisfy said board that the signers are all legal voters of said county, and that the signatures on said petition are all genuine.

SEC. 283. Remonstrances, signed by legal voters of the county only, and verified in like manner as the petition, may also be presented to the board. If the same persons petition and remonstrate they shall be counted only on the remonstrance, and if a greater number of legal voters remonstrate against the re-location than petition for it, no election shall be ordered.

No other papers, except petition and remonstrance, are to be considered. A re-petition is not authorized, and names appearing both on remonstrance and re-petition are to be counted on the remonstrance: *Loomis v. Bailey*, 45-400.

These signing petition, remonstrance and re-petition should be counted as remonstrants: *Jamison v. Board of Supervisors, &c.*, 47-388.

Notice: publication.
Same, § 5.

SEC. 284. Sixty days notice of the presentation of such petition shall be given by three insertions in a weekly newspaper, if there be one printed in the county; if no paper be therein printed, by posting the same in every township in the county and on the door of the court-house therein.

The notice is sufficient if the first of the three insertions is sixty days before the presentation of the petition: *Bennett v. Hetherington*, 41-142.

The giving of notice is not jurisdictional, and a failure therein will not invalidate the election: *Dishon v. Smith*, 10-212.

When vote may
be taken.
Same, § 4.

SEC. 285. Upon the presentation of such a petition, signed by at least one-half of all the legal voters in the county as shown by the last preceding census, if the notice hereinbefore prescribed shall have been given, the board shall order that at the next general election a vote shall be taken between said place and the existing county seat, and shall require a constable of each township in the county to post notices of such order in three public places in such township at least fifty days before said election, and shall also publish a notice of such election in some newspaper, if there be one published in the county, for four consecutive weeks, the last publication to be at least twenty days before said election.

An election should not be ordered if the number of remonstrants exceeds the number of petitioners who have not signed the remonstrance: *Loomis v. Bailey*, 45-400; nor unless the number of petitioners who have not signed the remonstrance exceeds one-half of the legal voters, &c. § 283 is a limitation or qualification of this section: *Duffees v. Sherman*, 48-287.

The provision as to posting notices is directory, and a failure to comply therewith will not render an election invalid: *Dishon v. Smith*, 10-212.

The decision of the board upon the

sufficiency of the petition and notice is judicial, and is conclusive, until set aside in some method provided for direct review: *Baker v. Board of Supervisors, &c.*, 40-226; *Bennett v. Hetherington*, 41-142.

The limitation provided in § 3224 upon the time within which an action by certiorari to correct an error of the board in holding a petition sufficient, may be brought, commences to run only from the time the board order an election, and not from the time they decide that the petition is sufficient: *Jamison v. Board of Supervisors, &c.*, 47-388, 391.

How conduct-
ed.
Same, §§ 6, 7.

SEC. 286. Such election shall be conducted as elections for county officers. The ballot shall state that it was cast for the county seat and name the place voted for.

Removal of
Same, § 8.

SEC. 287. If the point designated in the petition obtain a majority of all the votes cast, the board of supervisors shall make a record thereof, and declare the same to be the county seat of said county, and shall remove the records and documents thereto as early as practicable thereafter.

The result of the election may be declared and record thereof made at a special meeting: *Cole v. Board of Supervisors, &c.*, 11-552.

Where fraud or illegality in the election, &c., are alleged, an injunc-

tion will be granted to prevent the removal of the records, and the validity of the election will be tried: *Sweatt v. Faville*, 23-321, 327; *Rice v. Smith*, 9-570.

SEC. 288. The vote for re-location above provided for, shall How often.
not take place in any county oftener than once in three years. Same. § 2.

The right to a new election at the question by injunction or otherwise,
expiration of three years, does not deprive parties of the right to call in | *Sweatt v. Farille*, 23-321, 327.

BONDED INDEBTEDNESS.

SEC. 289. In any county the outstanding indebtedness of which, on the first day of January, 1880, exceeded the sum of five thousand dollars, the board of supervisors, by a vote of two-thirds of all the members thereof, are empowered, if they deem it for the public interest, to fund the same and issue bonds of the county therefor, in sums not less than one hundred dollars, nor more than one thousand dollars each, having not more than ten years to run, and bearing a rate of interest not exceeding seven per cent. per annum, payable semi-annually, which bonds shall be substantially in the following form:

No.

The county of in the state of Iowa, for value received, promises to pay or order, at the office of the treasurer of said county in on the first day of 18...., or at any time before that date, at the pleasure of the county, the sum of dollars, with interest at the rate of per cent. per annum, payable at the office of said treasurer semi-annually, on the first days of and in each year on presentation and surrender of the interest Coupons hereto attached. This bond is issued by the board of supervisors of said county under the provisions of chapter of the code of Iowa, and in conformity with a resolution of said board, dated day of 18....

In testimony whereof, the said county by its board of supervisors, has caused this bond to be signed by the chairman of the board, and attested by the auditor, with the county seal attached, this..... day of 18....

.....
Chairman of board of supervisors.

Attest:

.....
Auditor.....

And the interest coupon shall be in the following form:

\$..... the treasurer of county, Iowa, will pay the holder hereof, on the day of 18.... at his office in dollars, for interest on county bond No., issued under provisions of chapter of the code of Iowa.

.....
County Auditor.

[As amended, see note to next section.]

The validity of negotiable bonds, issued in satisfaction of a judgment, in the hands of innocent holders for value, cannot be questioned by showing that the judgment was rendered, upon a warrant issued in excess of the constitutional limitation: *S. C. & St. P. R. Co. v. County of Osceola*, 45-168; *Same v. Same*, 52-26.

Disposition of bonds.
13 G. A. ch. 54,
§ 2.

SEC. 290. Whenever bonds, issued under this chapter, shall be duly executed, numbered consecutively and sealed, they shall be delivered to the county treasurer and his receipt taken therefor, and he shall stand charged on his official bond with all bonds delivered to him and the proceeds thereof, and he shall sell the same, or exchange them, on the best available terms for any legal indebtedness of the county, outstanding on the first of January, 1880, but in neither case for a less sum than the face value of the bonds and all interest accrued on them at the date of such sale or exchange. And if any portion of the said bonds are sold for money, the proceeds thereof shall be applied exclusively for the payment of liabilities existing against the county at and before the date above named. When they are exchanged for warrants and other legal evidences of county indebtedness, the treasurer shall at once proceed to cancel such evidences of indebtedness, by endorsing on the face thereof the amount for which they were received, the word "canceled" and the date of cancellation. He shall also keep a record of bonds sold or exchanged by him by number, date of sale, amount, date of maturity, the name and post office address of purchasers, and, if exchanged, what evidence of indebtedness were received therefor, which record shall be open at all times for inspection by the public. Whenever the holder of any bond shall sell or transfer it, the purchaser shall notify the treasurer of such purchase, giving at the same time the number of the bond transferred and his post office address; and every such transfer shall be noted on the record. The treasurer shall also report, under oath, to the board at each regular session, a statement of all bonds sold or exchanged by him since the preceding report, and the date of such sale or exchange; and, when exchanged, a list or description of the county indebtedness exchanged therefor, and the amount of accrued interest received by him on such sale or exchange, which latter sum shall be charged to him as money received on bond fund, and so entered by him on his books; but such bonds shall not be exchanged for any indebtedness of the county except by the approval of the board of supervisors of said county.

[Secs. 289 and 290 amended as to the year by each general assembly, the last act being 18th G. A., ch. 183, and by the same act the rate of interest mentioned in § 289 was changed from ten to seven per cent. The limit of population which was contained in § 289 was stricken out by 15th G. A., ch. 9; and 16th G. A., ch. 125, besides the amending section (as to dates) contained the following:]

Board of Supervisors to be held liable.

SEC. 2. Any members of a board of supervisors in any county having four thousand inhabitants and over, according to the last preceding census, who shall vote to order an issue of bonds under this act in excess of the constitutional limit, shall be held personally liable for the excess of such issue.

Tax levied to pay bonds.
Same, § 3.

SEC. 291. The board of supervisors shall cause to be assessed and levied each year upon the taxable property of the county, in addition to the levy authorized for other purposes, a sufficient sum

to pay the interest on outstanding bonds issued in conformity with the provisions of this chapter accruing before the next annual levy, and such proportion of the principal, that at the end of three years the sum raised from such levies shall equal at least twenty per cent. of the amount of bonds issued; at the end of five years at least forty per cent. of the amount; and at and before the date of maturity of the bonds, shall be equal to the whole amount of the principal and interest; and the money arising from such levies shall be known as the bond-fund, and shall be used for the payment of bonds and interest Coupons, and for no other purpose whatever; and the treasurer shall open and keep in his books a separate and special account thereof, which shall at all times show the exact condition of said bond-fund.

This section does not limit the tax here required: *S. C. & St. P. R.*
board in its levy, to the amount of *Co. v. County of Osceola*, 52-26.

SEC. 292. Whenever the amount in the hands of the treasurer belonging to the bond fund, after setting aside the sum required to pay interest maturing before the next levy, is sufficient to redeem one or more bonds, he shall notify the owner of such bond or bonds that he is prepared to pay the same, with all interest accrued thereon, and if not presented for payment or redemption within thirty days after the date of such notice, the interest on such bonds shall cease, and the amount due thereon shall be set aside for its payment whenever presented. All redemptions shall be made in the exact order of their issuance, beginning at the lowest or first number; and the notice herein required shall be directed to the post-office address of the owner, as shown by the record kept in the treasurer's office.

Now paid or
redeemed.
Same, § 4.

SEC. 293. If the board of supervisors of any county which has issued bonds under the provisions of this chapter, shall fail to make the levy necessary to pay such bonds, or interest-coupons at maturity, and the same shall have been presented to the county treasurer, and the payment thereof refused, the owner may file the bond, together with all unpaid coupons with the auditor of state, taking his receipt therefor, and the same shall be registered in the auditor's office; and the executive council shall, at their next session as a board of equalization, and at each annual equalization thereafter, add to the state tax to be levied in said county, a sufficient rate to realize the amount of principal or interest past due, and to become due prior to the next levy, and the same shall be levied and collected as a part of the state tax, and paid into the state treasury, and passed to the special credit of such county as bond-tax, and shall be paid by warrant, as the payments mature, to the holder of such registered obligations, as shown by the register in the office of the state auditor, until the same shall be fully satisfied and discharged; any balance then remaining being passed to the general account and credit of said county.

When execu-
tive council
may levy tax.
Same, § 5.

REFUNDING BONDED INDEBTEDNESS OF COUNTIES, CITIES AND TOWNS.

[Seventeenth General Assembly, Chapter 58.]

SEC. 1. Counties, cities and towns are hereby authorized and empowered, if by a vote of two-thirds of the board of

Board of supervisors, city or town council may re-fund corporate indebtedness.

In bonds to run not more than twenty years.

Form of bond. No. _____

The _____ of _____, in the State of Iowa, for value received, promises to pay _____ or _____ order, at the office of the treasurer of said _____ in_____, on the first day of_____, or at time before that date after the expiration of five _____ years at the pleasure of the said _____, the sum of _____ dollars, with interest at the rate of _____ per cent. per annum, payable at the office of said treasurer semi-annually, on the first days of _____ and _____ in each year on presentation and surrender of the interest coupons hereto attached. This bond is issued by the _____ of said _____ under the provisions of chapter _____ of the session laws of the seventeenth general assembly of Iowa, and in conformity with a resolution of said _____, dated _____ day of _____, 18_____. In testimony whereof the said _____ has caused this bond to be signed by the _____ [L. S.] _____ and attested by the _____ seal attached this _____ day _____ of _____, 18_____, and the interest coupons shall be in the following form:

* _____

The treasurer of _____, Iowa, will pay to the holder hereof on the _____ day of _____, 18_____, at his office in _____ dollars for interest on _____ bond No. _____, issued under provisions of chapter _____ of the session laws of the seventeenth general assembly.

Treasurer to sell the same at not less than par.

Proviso: expense of preparing and disposing of bonds.

Levy to pay interest on bonds.

And part of principal.

SEC. 2. The treasurer of any such corporation is hereby authorized to sell and dispose of the bonds issued under this act at not less than their par value, and to apply the proceeds thereof to the redemption of the outstanding bonded debt; or he may exchange such bonds for outstanding bonds par for par; but the bonds hereby authorized shall be issued for no other purpose whatever; *provided*, however, such corporation may appropriate not to exceed two per centum of the bonds herein authorized to pay the expenses of preparing, issuing, advertising and disposing of the same, and may employ a financial agent therefor.

SEC. 3. The board of supervisors or common council of any city or town, as the case may be, shall cause to be assessed and levied each year upon the taxable property of the county, city, or town, as the case may be, in addition to the levy authorized for other purposes a sufficient sum to pay the interest on outstanding bonds issued in conformity with the provisions of this act, accruing before the next annual levy, and such proportion of the

principal that at the end of eight years the sum raised from such levies shall at least equal fifteen per cent. of the amount of bonds issued ; at the end of ten years at least thirty per cent. of the amount, and at or before the date of maturity of the bonds, shall be equal to the whole amount of the principal and interest ; and the money arising from such levies shall be known as the bond fund, and shall be used for the payment of bonds and interest coupons, and for no other purpose whatever ; and the treasurer of such county, city or town, shall open and keep in his book a separate and special account thereof, which shall, at all times, show the exact condition of said bond fund.

Treasurer
shall keep a
separate ac-
count of said
fund.

SEC. 4. Whenever the amount in the hands of the treasurer of any such county, city, or town belonging to the bond fund, after setting aside the sum required to pay the interest coupons maturing before the next levy, is sufficient to redeem one or more bonds, he may notify the owner of such bond or bonds that he is prepared to pay the same, with all interest accrued thereon, and if said bond or bonds are not presented for payment or redemption within thirty days after the date of such notice, the interest on such bond shall cease, and the amount due thereon shall be set aside for its payment whenever presented; *provided*, however, *Proviso.* that nothing herein shall be construed to mean that any such bond or bonds issued in accordance with this act, shall be due or payable before the expiration of five years after its date of issue.

Upon notice to
bondholder by
treasurer, inter-
est on bond will
cease.

All redemptions shall be made in the exact order of their issuance, beginning at the lowest or first number, and the notice herein required shall be directed to the post office address of the owner, as shown by the record kept in the treasurer's office.

Bonds shall be
redeemed in
order of their
issuance.

SEC. 5. If the board of supervisors of any county, or the common council of any city or town which has issued bonds under the provisions of this act shall fail to make the levy necessary to pay such bonds or interest coupons at maturity, and the same shall have been presented to the treasurer of any such county, city, or town, and payment thereof refused, the owner may file the bond, together with all unpaid coupons, with the auditor of state, taking his receipt therefor, and the same shall be registered in the auditor's office, and the executive council shall at their next session, as a board of equalization, and at each annual equalization thereafter, add to the state tax to be levied in said county, city, or town, a sufficient rate to realize the amount of principal or interest past due and to become due prior to the next levy, and the same shall be levied and collected as a part of the state tax, and paid into the state treasury, and passed to the credit of such county, city, or town, as bond tax, and shall be paid by warrant as the payments mature to the holder of such obligation, as shown by the register in the office of the state auditor until the same shall be fully satisfied and discharged; *provided*, that nothing shall be construed to limit or postpone the right of any holder of any such bonds, to resort to any other remedy which such holder might otherwise have.

In case board
or council fail
to order levy.

And payment
of bond is re-
fused.

The State
board of equal-
ization shall
add to the
state tax a suf-
ficient rate to
pay amount
due. And
same shall be
levied and col-
lected as a
part of state
tax.
Proviso:
Bondholder
may resort to
any other
remedy.

[Similar powers given to cities under special charter ; 18th G. A., ch. 140, not inserted; see note to § 551.]

CHAPTER 2.

OF THE BOARD OF SUPERVISORS.

Number: election. SECTION 294. The board of supervisors in each county shall consist of three persons, except where the number may heretofore have been, or hereafter be, increased in the manner provided by section two hundred and ninety-nine of this chapter. They shall be qualified electors, and be elected by the qualified voters of their respective counties, and shall hold their office for three years.

When elected. SEC. 295. At the general election in each year, there shall be at least one supervisor elected in each county, who shall not be a resident of the same township with either of the members holding over, and who shall continue in office three years.

Meetings of. SEC. 296. The members of the board shall meet at the county seat of their respective counties, on the first Mondays of January, April, June, September, and the first Monday after the general election in each year, and such special meetings as are provided for by law.

Quorum. SEC. 297. A majority of the board of supervisors shall be a quorum to transact business, but should a division take place on any question when only two members of the board are in attendance, the question shall be continued until there is a full board of supervisors.

Resignation. SEC. 298. The absence of any supervisor from the county for six months in succession shall be a resignation of his office.

Number: how increased. SEC. 299. The board of supervisors of any county may, and when petitioned to do so by one-fourth of the electors of said county shall, submit to the qualified voters of the county at any regular election, the question, "Shall the number of supervisors be increased to five," or "seven," as the board shall elect in submitting the question. If the majority of the votes cast shall be for the increase of the number, then, at the next ensuing election for a supervisor, the requisite additional supervisors shall be elected, whose terms of office shall be determined by lot in such a manner that one-half of the additional members shall hold their office for three years, and one-half for two years. In any county where the number of supervisors has been increased to "five" or "seven" the board of supervisors, on the petition of one-fourth of the legal voters of the county, shall submit to the qualified voters of the county at any regular election the question, "Shall the number of supervisors be reduced to five," or "three?" If a majority of the votes cast shall be for the decrease, then the board of supervisors shall be reduced to the number indicated by such vote, and thereafter there shall be annually elected the number requisite to keep the board full.

Where the board of supervisors is thus increased, the additional members are not to be designated on the ballots for their election in any different manner from the others: *Bradfield v. Wart*, 36-291.

SUPERVISOR DISTRICTS.

[Fifteenth General Assembly, Chapter 39.]

SEC. 1. The board of supervisors of each county may, at their regular meeting in June, A. D. 1874, or at their regular June meeting in any even numbered year thereafter, divide their respective counties, by townships, into a number of supervisor districts corresponding to the number of supervisors in their respective counties, or at such regular meeting, they may abolish supervisor's districts and provide for electing supervisors for the county at large. Board may establish supervisor districts.

SEC. 2. Such districts shall be as nearly equal in population as possible, and shall each embrace townships as nearly contiguous as practicable, each of which said districts shall be entitled to one member of such board, to be elected by the electors of said district. How constituted.

SEC. 3. In case such division, or any subsequent division, shall be found to leave any district or districts without a member of such board of supervisors, then at the next ensuing general election a supervisor shall be elected by and from such district having no member of such board; and, if there be two such districts or more, then the new member or members of said board shall be elected by and from the district or districts having the greater population according to the last state census, and so on till each of such districts shall have one member of such board. Election of members from unrepresented districts.

SEC. 4. Any county may be redistricted, as provided by the Redistricting preceding sections of this act, once in each and every two years, and not oftener, and nothing herein contained shall be construed or have the effect to lengthen or diminish the term of office of any member of such board.

[As amended (in § 1) by 17th G. A., ch. 68.]

ORGANIZATION—POWERS.

SEC. 300. The board of supervisors, at their first meeting in every year, shall organize by choosing one of their number as chairman, who shall preside at all the meetings of the board during the year. Every chairman of the board of supervisors shall have power to administer an oath to any person concerning any matter submitted to the board or connected with their powers. Organization: powers R. & 300.

SEC. 301. Special meetings of the board of supervisors shall be held only when requested by a majority of the board, which request shall be in writing, addressed to the county auditor, and shall specify the object for which such special meeting is desired. The auditor shall thereupon fix a day for such meeting, not later than ten days from the day of the filing of the petition with him, and shall immediately give notice in writing to each of the supervisors personally, or by leaving a copy thereof at his residence, at least six days before the day set for such meeting. The notice shall state the time and place where the meeting will be held and the object of it, as stated in the petition; and at such special meeting no business other than that so designated in the petition and notice shall be considered or transacted. The auditor shall also give public notice of the meeting by publication in not exceeding

- two newspapers published in the county, or, if there be none, by causing notice of the same to be posted on the front door of the court house of the county, and in two other public places therein, one week before the time set therefor.
- Failure of duty.** R. § 311. SEC. 302. If any supervisor shall neglect or refuse to perform any of the duties which are, or shall be, required of him by law as a member of the board of supervisors, without just cause therefor, he shall, for each offense, forfeit one hundred dollars.
- Powers.** R. § 312. SEC. 303. The board of supervisors at any regular meeting shall have the following powers, to-wit:
- Chairman. 1. To appoint one of their number chairman, and also a clerk in the absence of the regular officers;
 - Adjourn. 2. To adjourn from time to time, as occasion may require;
 - County property. 3. To make such orders concerning the corporate property of the county as they may deem expedient;
 - Settle accounts. 4. To examine and settle all accounts of the receipts and expenditures of the county, and to examine, settle, and allow all just claims against the county unless otherwise provided for by law;
 - Buildings. 5. To build and keep in repair the necessary buildings for the use of the county and of the courts;
 - To insure. 6. To cause the county buildings to be insured in the name of the county, or otherwise, for the benefit of the county, as they shall deem expedient, and in case there are no county buildings, to provide suitable rooms for county purposes;
 - Change boundaries. 7. To set off, organize, and change the boundaries of townships in their respective counties, designate and give names thereto and define the place of holding the first election;
 - Ferries. 8. To grant licenses for keeping ferries in their respective counties as provided by law.
 - Purchase real estate for county. 9. To purchase for the use of the county, any real estate necessary for the erection of buildings for county purposes, to remove or designate a new site for any county buildings required to be at the county seat, when such removal shall not exceed the limits of the village or city at which the county seat is located;
 - Control officers. 10. To require any county officer to make a report, under oath, to them on any subject connected with the duties of his office, and to require any such officer to give such bonds, or additional bonds, as shall be reasonable or necessary for the faithful performance of their several duties; and any such officer who shall neglect or refuse to make such report or give such bonds within twenty days after being so required, may be removed from office by the board by a vote of a majority of the members elected;
 - County Agents. 11. To represent their respective counties, and to have the care and management of the property and business of the county in all cases where no other provision shall be made;
 - School fund. 12. To manage and control the school fund of their respective counties as shall be provided by law;
 - Highways. 13. To appoint commissioners to act with similar commissioners duly appointed in any other county or counties, and to authorize them to lay out, alter, or discontinue any highway extending through their own and one or more other counties, subject to the ratification of the board;

14. To fix the compensation of all services of county and township officers not otherwise provided for by law and to provide for the payment of the same;

15. To authorize the taking of a vote of the people for the re-Submit to vote.
location of the county seat as provided by law;

16. To alter, vacate, or discontinue any state or territorial highway within their respective counties; Highways.

17. To lay out, establish, alter, or discontinue any county highway heretofore or now laid out, or hereafter to be laid through or within their respective counties, as may be provided by law; Same.

18. To provide for the erection of all bridges which may be necessary, and which the public convenience may require within their respective counties, and to keep the same in repair; Bridges.

19. To determine what bounties, in addition to those already provided by law, if any, shall be offered and paid by their county on the scalps of such wild animals taken and killed within their county as they may deem it expedient to exterminate. But no such bounty shall exceed five dollars. Bounty. 10 G. A. ch. 60.

20. To purchase for the use of the county any real estate necessary for the erection of buildings for the support of the poor of such county and for a farm to be used in connection therewith; Poor house.

21. To have and exercise all the powers in relation to the poor given by law to the county authorities; Poor.

22. To make such rules and regulations, not inconsistent with law, as they may deem necessary for the government of their body, the transaction of business, and the preservation of order;

23. The board of supervisors shall constitute the board of Canvassers. county canvassers;

24. It shall not be competent for said board of supervisors to order the erection of a court house, jail, poor house, or other building, or bridge, when the probable cost will exceed five thousand dollars, nor the purchase of real estate, for county purposes, exceeding two thousand dollars in value, until a proposition therefor shall have been first submitted to the legal voters of the county, and voted for by a majority of all voting for and against such proposition at a general or special election, notice of the same being given for thirty days previously, in a newspaper, if one is published in the county, and if none be published therein, then by written notice posted in a public place in each township in the county. Must submit to vote, prop. si-
tion to erect
buildings or
bridges.
R. § 312.
11 G. A. ch. 87.
§ 2.
13 G. A. ch. 38.
14 G. A. ch. 1.
11 ch. 53; ch.
130, § 1.

Provided, that the board of supervisors of any county having a population of more than ten thousand, may appropriate, for the construction of any one bridge, which is or may hereafter become a county charge, within the limits of such county, or may appropriate towards the construction of any bridge across any unnavigable river which is the dividing line between any two counties in this state, and between one county in this state, and another state, such sum as may be necessary, not exceeding the sum of forty dollars a lineal foot for superstructure, but in no case shall they appropriate for said purpose, including superstructure and approaches, a sum exceeding fifteen thousand dollars.

Exceptions:
counties with
population of
ten thousand.

Provided, however, that in any county having a population of fifteen thousand population, said board may appropriate as aforesaid, not to exceed twenty-five thousand dollars.

Bridge between two counties.

Provided, that no county shall expend a sum exceeding fifteen thousand dollars in aid of the construction of a bridge across a stream which is the dividing line between two counties.

[Sub-division 24 as repealed and re-enacted, with the addition of the last two provisos, and a change in the number of inhabitants as specified in the first proviso (2nd line) by 16th G. A. ch. 80. The words, "or special," in the 8th line of the sub-division are inserted by 18th G. A. ch. 46.]

PAR. 3. The control and management of county property is given to the board. See ¶ 11 and notes.

PAR. 4. A claim cannot be a *just claim* against the county to be allowed under this provision unless the law somewhere either requires or authorizes its payment: *Foster v. Clinton Co.*, 51-541.

The board has a discretion as to the allowance of claims against the county, unless otherwise provided: *Bean v. Board of Supervisors, &c.*, 51-53.

PAR. 11. The power being given to a county, by § 279, to hold property, and by this section to the board of supervisors to control it, *held*, that the power to make all contracts necessary to the protection and perfection of the title to such property, rests in such board: *Allen v. Cerro Gordo Co.*, 34-54.

A compromise of a claim, made in good faith by the board, will be held binding: *Grimes v. Hamilton Co.*, 37-290, 298.

The board may offer a reward for the recovery of funds stolen from the county, but not for the arrest of the criminal: *Hawk v. Marion Co.*, 48-472.

The board has authority to employ a special agent or attorney to assist in the collection of taxes not collectible by the county treasurer: *Wilhelm v. Cedar Co.*, 50-254.

PAR. 18. The county being expressly empowered to make and repair bridges, and levy a bridge tax for such purpose (§ 796), it is its duty and not that of the road supervisor, to build and keep in repair such county bridges, i. e. bridges which are of such size as to require an extraordinary expenditure of money to construct them, or the repairs upon which involve a considerable expense; and the county is liable for damages resulting from neglect to build or repair: *Wilson v. Jefferson Co.*, 13-181; *Brown v. Jefferson Co.*, 16-339; *Soper v. Henry Co.*, 26-264; *Kendall v. Lucas Co.*, 26-395; *Chandler v. Fremont Co.*, 42-58; *Huston v. Iowa Co.*, 43-456; *Krause v. Davis Co.*, 44-141; *Davis v. Allamakee Co.*, 40-217;

Moreland v. Mitchell Co., 40-394. But the county is not responsible for bridges which it is contemplated shall be built and kept in repair by the road district (§ 969), and for damages resulting from the unsafe condition of which the road supervisor is made personally liable, after notice in writing (§ 990): *Soper v. Henry Co.*, 26-264; *Chandler v. Fremont Co.*, 42-58; *Taylor v. Davis Co.*, 40-295.

The general language of this paragraph is to be construed in connection with the general provisions of the statute regulating the making and repairing of highways (§ 969 et seq.) *Soper v. Henry Co.*, 26-264.

The approaches to a county bridge constitute a part of the bridge, and the county is liable for defects in the construction of such approaches: *Moreland v. Mitchell Co.*, 40-394; *Albee v. Floyd Co.*, 46-177.

That citizens, or another corporation have contributed to the construction of the bridge, does not relieve the county from liability for negligence in constructing it or keeping it in repair: *Moreland v. Mitchell Co.*, and *Albee v. Floyd Co.*, *supta.*

Held, that the county was not liable for damages resulting from the falling of a bridge, where it did not appear that it had ever assumed control thereof, or made appropriation for building it or keeping it in repair, and that the records of the board showing the appropriation for rebuilding, after the accident, were not admissible to establish such liability: *Titler v. Iowa Co.*, 48-90.

A county may erect, or aid in the erection of a free bridge on a public highway within the limits of a city: *Bell v. Fouch*, 21-119; *Barrett v. Brooks*, *id.* 144, and see § 527.

PAR. 22. The rules and regulations here contemplated are for their own government and not for the government of other bodies or boards: *Hunter v. Jasper Co.*, 40-568.

PAR. 24. The members of a board of supervisors violating these provisions by voting to erect a building or bridge, the probable cost of which exceeds the amount here specified, with-

out having submitted the question to vote, are guilty of a misdemeanor under § 3966: *The State v. Conlee*, 23-237.

Where the erection of a building, the probable cost of which exceeds five thousand dollars, has been formally authorized, the board are limited to the amount authorized by such vote, and an indebtedness contracted beyond that amount is void: *Reichard v. Warren Co.*, 31-381.

The county cannot be held on an implied contract for a *quantum meruit* where an express contract would have been unauthorized. The acceptance and occupation of a building, erected with greater expense than that authorized, will not render the county liable

for its cost beyond the amount authorized: *Ibid.*

The board may order the purchase of real estate, not exceeding two thousand dollars in value, and the erection thereon of a public building not costing to exceed five thousand dollars, without submitting the question to a vote: *Merchant v. Tama Co.*, 32-200.

In the submission of a proposition for the outlay of money, two distinct objects, each calling for a certain specified amount, cannot be included in one proposition: *Gray v. Mount*, 45-591.

Before the amendment made by 18th G. A., ch. 46, *held*, that the submission here authorized, could only be made at a general election: *Ibid.*

BRIDGES ON COUNTY LINE ROADS.

[Seventeenth General Assembly, Chapter 40.]

SEC. 1. Wherever a county line road intersects a stream of sufficient width to require a county bridge, and the point of intersection does not afford a suitable site for the construction of such bridge, and there is a good site for the erection of a bridge wholly within one or the other of said counties, at a reasonable distance from the county line, the boards of supervisors of the respective counties to be benefited by said bridge may make the necessary appropriations for the construction and maintenance of such bridge, the same as they might do if said bridge was located on county line.

On county line road, bridge may be built wholly in one county.

And paid for by other counties benefited.

USING SURPLUS BRIDGE FUND FOR IMPROVEMENT OF HIGHWAYS.

[Eighteenth General Assembly, Chapter 88.]

SEC. 1. Whenever any county in this state is free from debt, and has a surplus in its bridge fund, after providing for the necessary repairs of bridges in said county, then the board of supervisors of such county may, out of such surplus, make improvements on the highways upon the petition of one third of the resident freeholders of any township in said county, but in no case shall they be authorized to run the county in debt for such improvements of the highways, and whenever they shall make such improvements they shall let the work by contract to the lowest responsible bidder, after having advertised for proposals in some newspaper printed in the county for not less than fourteen days previous to the letting of said contract.

Board of supervisors upon petition of freeholders may use surplus but not contract debt.

Work to be let by contract upon proposals after advertisement.

TRANSFER OF BRIDGE FUND TO CITY.

[Eighteenth General Assembly, Chapter 45.]

SEC. 1. In each county in this state containing a city of the first class within the corporate limits of which there are any bridge or bridges, exceeding three hundred feet in length, constructed by such city, and for the cost of constructing which such city shall be

Board of supervisors to set apart portion of bridge fund collected with in city.

indebted in a sum of not less than one hundred thousand dollars, the board of supervisors *be and* hereby is required to annually set apart and pay to such city out of the bridge fund of such county, the whole amount of bridge tax collected on the taxable property within the limits of such city for that year, until such indebtedness shall be fully paid. Thereupon such bridge or bridges [shall] *be and* become free, and such city *be and* hereby is required to apply the money so set apart and paid to it, and the tolls meanwhile collected on such bridge or bridges, after first paying the necessary expense of maintaining the same, on such indebtedness, and it shall be unlawful to use or apply the same or any part thereof for or to any other purpose, except that so much thereof as may be necessary for that purpose may be used to repair any bridge or bridges in such city, the repair of which is required for public safety.

To be applied
to pay bridge
bonds.

PROCEEDINGS PUBLISHED.

Proceedings
published.
R. § 313.

SEC. 304. They shall cause to be made out and published immediately after each regular or special meeting of the board, in at least one newspaper, if there be one in the county, and, if not, by posting on the court-house door, a schedule of the receipts and expenditures of the county, which shall state the names of all claimants, the amount claimed, the amount allowed, for what purpose allowed, and a full statement of the amounts of the treasurer's accounts at the last settlement as on his balance sheet, or account-current in making such settlement.

Majority of
whole board
required.
R. § 313.

SEC. 305. No tax shall be levied, no contract for the erection of any public buildings entered into, no settlement with the county officers made, no real estate purchased or sold, no new site designated for any county buildings, no change made in the boundaries of townships, and no money appropriated to aid in the construction of highways and bridges, without a majority of the whole board of supervisors voting therefor and consenting thereto.

The authority of a county to aid in the construction of a road, is here necessarily implied and warrants is- | sued therefor are valid: *Long v. Boone Co.*, 32-181.

County officers
control adver-
tisements.

SEC. 306. The clerk of the district court, sheriff, auditor, treasurer, and recorder shall designate the newspapers in which the notices pertaining to their several offices shall be published, and the board of supervisors shall designate the papers in which all other county notices shall be published; and in counties having a population exceeding eighteen thousand inhabitants, the board shall designate as one of such papers, a paper published in a foreign language, if there be such in its county.

This refers only to county notices | tiff may designate the papers in which and not to notices in reference to the publication shall be made: See § commencement of actions or sales 3832, and note. upon execution, in which cases plain-

Newspapers
selected to
publish pro-
ceedings.
11 G. A. ch. 118,
§ 1. 3.
12 G. A. ch. 165.

SEC. 307. The board of supervisors shall, at its January session of each year, select two newspapers published within the county, or one, if but one be published therein, having the largest circu-

lation in the county where published, in which the proceedings of said board shall be published at the expense of the county, and in counties having eighteen thousand inhabitants, a paper printed in a foreign language, if published in said county, shall also be selected, in which such proceedings shall be published; and the auditor shall furnish such papers selected, a copy of such proceedings for that purpose; *provided*, that the cost of such publication shall not exceed one-third the rate allowed by law for legal advertisements.

The proprietor or publisher of a newspaper has no such interest in the selection of his paper for the publication of proceedings, etc., that he can maintain an action in his own name to compel the board to comply with the law, and order such publication in his paper: *Welch v. Board of Supervisors, &c.*, 23-199; *Smith v. Yoram*, 37-89.

SEC. 308. The board is authorized and required to keep the following books: Book kept.
R. § 18.

1. A book to be known as the "minute book," in which shall be recorded all orders and decisions made by them, except those relating to highways. All orders for the allowance of money from the county treasury, shall state on what account and to whom the allowance is made, dating the same and numbering them consecutively through each year;
2. A book to be known as the "highway record," in which shall be recorded all proceedings and adjudications relating to the establishment, change, or discontinuance of highways;
3. A book to be known as the "warrant book," in which shall be entered in the order of their issuance, the number, date, amount, name of drawee of each warrant drawn on the treasury, and the number of warrants as directed in relation to the minute book.

QUESTIONS—SUBMITTED TO THE PEOPLE.

SEC. 309. The board of supervisors may submit to the people of the county at any regular election, or at any special one called for that purpose, the question whether money may be borrowed to aid in the erection of any public buildings, whether any species of stock, not prohibited by law, shall be permitted to run at large and at what time it shall be prohibited, and the question of any other local or police regulation not inconsistent with the laws of the state. And when the warrants of a county are at a depreciated value, they may, in like manner, submit the question whether a tax of a higher rate than that provided by law shall be levied, and in all cases when an additional tax is laid, in pursuance of a vote of the people of any county, for the special purpose of repaying borrowed money, or constructing, or aiding to construct, any highway or bridge, such special tax shall be paid in money, and in no other manner.

[The word "now," as it stood in the original section between "not" and "prohibited" in line five, stricken out; the meaning of the word "stock" defined, and further provisions made as to submitting to vote the question whether stock shall be permitted to run at large, 15th G. A., ch. 70, § 4; see that act inserted following § 1453.]

Two or more propositions may be submitted to vote at the same time, but they cannot be joined together so as to make the adoption of each dependent upon the adoption of all the others: *McMillan v. Lee Co.*, 3-311; *Gray*

v. Mount, 45-591.

If the board are authorized to borrow money, they may do it by means of negotiable bonds, but if not so authorized, they have no authority to issue such bonds, and bonds so issued would be void [decided under § 114, Code 1-51]: *Hull v. County of Marshall*, 12-142; *Casady v. Woodbury Co.*, 13-113.

Also, held, under the same statute (Rev. § 2-10), that a county was not authorized to vote a subscription of

stock, or to issue bonds in aid of a railroad company, (overruling *Dubuque Co. v. D. & P. R. Co.*, 4 Gr. 1; *Slokes v. County of Scott*, 10-166; *The State v. County of Wapello*, 13-388. Also, see *Hanson v. Vernon*, 27-28, and cases cited in each of these cases. But see *Stewart v. Board of Supervisors, etc.*, 30-9.

Where the county has authority to issue bonds, such bonds may possess the attributes of negotiability: *Clapp v. Cedar Co.*, 5-15.

Mode of
R. § 251.
C. 51, § 115.

SEC. 310. The mode of submitting such questions to the people shall be the following: the whole question, including the sum desired to be raised, or the amount of tax desired to be levied, or the rate per annum, and the whole regulation, including the time of its taking effect or having operation, if it be of a nature to be set forth, and the penalty for its violation if there be one, shall be published at least four weeks in some newspaper printed in the county. If there be no such newspaper, the publication shall be by being posted up in at least one of the most public places in each township in the county, and in addition, in at least five among the most public places in the county, one of them being the door of the court house, for at least thirty days prior to the time of taking the vote. All such notices shall name the time when such question will be voted upon, and the form in which the question shall be taken, and a copy of the question submitted shall be posted up at each place of voting during the day of election.

Where the question submitted was what year the tax should be levied, whether a special tax should be levied to pay depreciated county warrants, held, that the omission to specify for

rendered the submission invalid: *Iowa R. Land Co. v. County of Sac*, 33-124, 149.

When to borrow or expend money.
R. § 252.
C. 51, § 116.

SEC. 311. When a question so submitted involves the borrowing or the expenditure of money, the proposition of the question must be accompanied by a provision to lay a tax for the payment thereof in addition to the usual taxes, as directed in the following section, and no vote adopting the question proposed will be of effect unless it adopt the tax also.

The adoption of a proposition for the expenditure of money, is of no effect unless the submission of such proposition was accompanied by the provision to lay a tax for the payment thereof: *Starr v. Board, etc. of Des Moines Co.*, 22-491. But it is not

necessary that the provision for levying the tax be a distinct proposition to be voted upon separately from the main one; each proposition, however, must be accompanied by such a provision: *McMillan v. Lee County*, 3-311.

Rate of tax
R. § 253.
C. 51, § 117.

SEC. 312. The rate of tax shall in no case be more than one per cent. on the county valuation in one year. When the object is to borrow money for the erection of public buildings as above provided, the rate shall be such as to pay the debt in a period not exceeding ten years. When the object is to construct, or to aid in constructing, any highway or bridge, the annual rate shall not be less than one mill on the dollar of valuation, and any of the above taxes becoming delinquent shall draw the same interest with the ordinary taxes.

The authority of a county to aid in the construction of a road is here necessarily implied, and warrants issued therefor are valid: *Long v. Boone Co.*, 32-181.

SEC. 313. When it is supposed that the levy of one year will not pay the entire amount, the proposition and the vote must be to continue the proposed rate from year to year, until the amount is paid.

SEC. 314. The board of supervisors, on being satisfied that the above requirements have been substantially complied with, and that a majority of the votes cast are in favor of the proposition submitted, shall cause the proposition and the result of the vote to be entered at large in the minute book, and a notice of its adoption to be published for the same time and in the same manner as above provided for publishing the preliminary notice, and from the time of entering the result of the vote in relation to borrowing or expending money, and from the completion of the notice of its adoption in the case of a local or police regulation, the vote and the entry thereof on the county records shall be in full force and effect.

SEC. 315. Propositions thus adopted, and local regulations thus established, may be rescinded in like manner and upon like notice by a subsequent vote taken thereon, but neither contracts made under them, nor the taxes appointed for carrying them into effect, can be rescinded.

SEC. 316. The board shall submit the question of the adoption or rescission of such a measure when petitioned therefor by one-fourth of the voters of the county, unless a different number be prescribed by law in any special case.

SEC. 317. The record of the adoption or rescission of any such measure shall be presumptive evidence that all the proceedings necessary to give the vote validity have been regularly conducted.

SEC. 318. In case the amount produced by the rate of tax proposed and levied exceeds the amount sought for the specific object, it shall not, therefore, be held invalid, but the excess shall go into the ordinary county funds.

SEC. 319. Money so raised for such purposes is specially appropriated, and constitutes a fund distinct from all others in the hands of the treasurer until the obligation assumed is discharged.

[Sixteenth General Assembly, Chapter 84.]

SEC. 1. In any county of this state, where any special levy has been made to pay any claim, bond or other indebtedness, and the same shall have remained in the treasury of the county, uncalled for, for a period of three years, the board of supervisors of such county may authorize such unclaimed fund to be transferred to the general county fund.

CHANGING NAMES OF UNINCORPORATED TOWNS AND VILLAGES.

[Sixteenth General Assembly, Chapter 146.]

SEC. 1. The board of supervisors may change the name of unincorporated towns or villages within their respective counties in the manner herein prescribed.

Board of supervisors may change name.

Petition for change.

SEC. 2. When any number of the inhabitants of such town or village shall desire to change the name thereof, there shall be filed in the office of the county auditor of the proper county, at least ten days before the regular meeting of the board of supervisors, a petition for that purpose, which must be signed by at least two-thirds of the qualified electors of said town or village, setting forth the name by which said town or village is known, its location as near as practicable, and giving the name which they desire the town shall thereafter be known by.

Notice.

SEC. 3 Notice of the filing of said petition and the time and place when the same shall be heard, and the objects and purposes thereof, shall be given at least four weeks before the regular meeting of the board of supervisors, in like manner as the publication of original notices in civil actions where the defendant cannot be personally served within the state; or by posting up a notice of said petition in three public places in the town or village the name of which is sought to be changed, at least four weeks before the meeting of said board, and also one copy of said notice for the same length of time on the front door of the court house of the proper county wherein the last term of the district court was held.

Hearing.

SEC. 4. At the first regular meeting of said board after publication of notice is completed, the board of supervisors shall proceed to hear and determine said petition, unless said hearing is for good cause continued until the next meeting; and said board on the hearing of said petition, shall hear any remonstrances against the proposed change, and in all its proceedings in relation to the hearing of said petition and remonstrances to the same, the said board shall be governed by the law regulating the hearing of petitions for the establishment of highways, so far as they are applicable and not inconsistent with this act.

When board shall order change.

SEC. 5. If, on the hearing, it shall appear to the said board that two-thirds of the qualified electors of said town or village in good faith signed said petition for change of name, and desired the same, then the said board shall order said name to be changed as prayed for.

Order shall contain—.

SEC. 6. Said order of the board shall thereupon be entered of record, giving the name of said town or village as set forth in said petition, the new name given, the time when the change shall take effect which shall not be less than thirty days thereafter, and directing that notice of said change shall be published in at least one newspaper published in said county, if any; and if there is no newspaper published in said county, then said notice shall be published by posting the same for four weeks on the front door of the court house where the last term of the district court of said county was held.

Proof of publication.

SEC. 7. The ordinary proof of such publication shall be filed in the office of the county auditor, shall be by him filed for preservation, and on the day fixed by the board as aforesaid the change shall be complete.

Costs.

SEC. 8. In all cases arising under the provisions of this act where there is no remonstrance or opposition to said petition, the petitioners shall pay all costs; but in all other cases, costs shall abide the result of the proceeding, and be taxed to either party, in the discretion of the board, or divided equitably between the parties.

CHAPTER 3.

OF THE COUNTY AUDITOR.

SECTION 320. The county auditor shall:

1. Record all the proceedings of the board in proper books Duties of
provided for that purpose. R. § 319, §20.
12 G. A. ch. 160,
2. Make full entries of all their resolutions and decisions on all ^{all} questions concerning the raising of money, and for the allowance of money from the county treasury;
3. Record the vote of each supervisor on any question submitted to the board, if required by any member present;
4. Sign all orders issued by the board for the payment of money, and record in a book provided for the purpose, the reports of the county treasurer of the receipts and disbursements of the county;
5. Preserve and file all accounts acted upon by the board, with their action thereon, and perform such special duties as are or may be required of him by law;
6. Designate upon every account on which any sum shall be allowed by the board, the amount so allowed and the charges for which the same was allowed;
7. Deliver to any person who may demand it, a certified copy of any record or account in his office on payment of his legal fees therefor.

[The auditor to report the expenses of the county for criminal prosecutions to the clerk, see 18th G. A., ch. 22, § 2, inserted following § 378.]

Mandamus may be brought to compel the proper officer to attach the county seal to a warrant drawn by him or his predecessor, on the treasurer, to make it conform to the requirements of § 327. Such action will be barred under § 2529, ¶ 3, in three years from the issuance of the warrant, and not from the time demand was made to have the seal attached: *Prescott v. Gonser*, 34-175.

SEC. 321. The auditor shall not sign or issue any county warrant except upon the recorded vote or resolution of the board of supervisors authorizing the same, except for jury fees, and every such warrant shall be numbered, and the date, amount, and number of the same, and the name of the person to whom issued, shall be entered in a book to be kept by him in his office for the purpose.

If a vote is legally passed authorizing the issuance of warrants, and the failure to record it is a mere clerical omission, such failure to record will not invalidate a warrant otherwise legally and properly issued: *Clark v. Polk Co.*, 19-248; *Long v. Boone Co.*, 36-60, 66.

As no recorded vote is necessary to authorize the issuance of warrants for jury fees, held, that the fact that no

vote authorizing certain warrants appeared of record, did not necessarily render such warrants invalid: *Clark v. Polk Co.*, 19-248.

County warrants are not negotiable instruments: *Ibid.*

This section is directory and not mandatory, and a warrant issued, where there is no recorded vote, is not, on that account, void: *Griggs v. Kimball*, 42-512.

SEC. 322. Whenever the auditor of any county shall receive School fund. R. § 322. from the state auditor, notice of the apportionment of school moneys to be distributed in the county, he shall file the same in his

office and transmit a certified copy thereof to the county treasurer, and he shall also lay a certified copy thereof before the board at its next regular meeting.

Court house.
Ex. S. 8, G. A.
ch. 2.

SEC. 323. The county auditor shall have the general custody and control of the court house in each county respectively, subject to the direction of the board of supervisors.

Report to sec-
retary of state.
R. § 291.

SEC. 324. The county auditor shall report to the secretary of state the name, office, and term of office of every county officer elected or appointed, within ten days after their election and qualification, and the secretary of state shall record the same in a book to be kept for that purpose in his office.

Who eligible.
12 G. A., ch. 160,
§ 7.

SEC. 325. The clerk of the district court and county recorder shall each be eligible to the office of county auditor, and may discharge the duties of both offices.

Can not be
treasurer.

SEC. 326. The offices of county auditor and county treasurer shall not be united in the same person. The auditor and his deputy are prohibited from acting as attorney, either directly or indirectly, in any matter pending before the board of supervisors.

CHAPTER 4.

OF THE COUNTY TREASURER.

Duties.
R. § 300.
C. 51, § 152.

SECTION 327. The treasurer shall receive all money payable to the county, and disburse the same on warrants drawn and signed by the county auditor and sealed with the county seal, and not otherwise; and shall keep a true account of all receipts and disbursements, and hold the same at all times ready for the inspection of the board of supervisors.

As to bond of county treasurer and his liability thereon, see § 674, and notes.

A warrant to which the county seal is not affixed is not valid. The county may be liable on the indebtedness for which such warrant was issued, but not on the warrant: *Springer v. County of Clay*, 35-241. As to compelling auditor to affix the seal in a proper case, see note to § 329.

The treasurer, and not the auditor, should receive money belonging to the school fund: *Mahaska Co. v. Searle*, 44-492.

When no
funds.
R. § 3-1.
C. 51, § 153.

SEC. 328. When the warrant drawn by the auditor on the treasurer is presented for payment, and not paid for want of money, the treasurer shall endorse thereon a note of that fact and the date of presentation, and sign it, and thenceforth it shall draw interest at the rate of six per cent.; and when a warrant which draws interest is taken up, the treasurer is required to endorse upon it the date and amount of interest allowed, and such warrant is to be considered as canceled and shall not be re-issued.

A county cannot stop interest on outstanding warrants by notice that it is ready to redeem the same. Nothing short of actual tender is sufficient for that purpose: *Roony v. Dubuque Co.*, 44-128.

Warrants
when divided.
R. § 362, 7-5.
C. 51, §§ 154,
490.

SEC. 329. When a person wishing to make a payment into the treasury presents a warrant of an amount greater than such payment, the treasurer shall cancel the same and give the holder a

certificate of the overplus, upon the presentation of which to the county auditor, he shall file it and issue a new warrant of that amount, and charge the treasurer therewith, and such certificate is transferable by delivery, and will entitle the holder to the new warrant, which, however, must be issued in the first drawee's name.

Where the treasurer failed to cancel warrants as here provided, and they were stolen without fault on his part, and again put in circulation and paid, held, that there was such neglect of duty as to render him liable: *County of Johnson v. Hughes*, 12-

360. Where the treasurer issued what purported to be warrants instead of certificates for such overplus as here provided, such instruments were held invalid: *Barney v. Buena Vista Co.*, 33-261.

SEC. 330. The treasurer shall keep a book, ruled so as to contain a column for each of the following items in relation to the warrants drawn on him by the auditor—the number, date, drawee's name, when paid, to whom, original amount, and interest paid on each.

Warrant book.
R. § 363.
C. '51, § 150.

SEC. 331. The treasurer shall keep a separate account of the several taxes for state, county, school, and highway purposes, opening an account between himself and each of those funds, charging himself with the amount of the tax, and crediting himself with the amounts paid over severally, and with the amount of delinquent taxes when legally authorized so to do.

Keep separate accounts.
R. § 364.
C. '51, § 156.

SEC. 332. The warrants returned by the treasurer shall be compared with the warrant book, and the word "canceled" be written over the minute of the proper numbers in the warrant book, and the original warrant be preserved for at least two years.

Warrants canceled.
R. § 365.
C. '51, § 159.

SEC. 333. The treasurer is required to make weekly returns to the auditor of the number, date, drawee's name, when paid, to whom paid, original amount, and interest, as kept in the book before directed.

Returns of.
R. § 366.
C. '51, § 160.

SEC. 334. A person re-elected to, or holding over the office of treasurer, shall keep separate accounts for each term of his office.

Accounts each term.
R. § 367.
C. '51, § 161.

CHAPTER 5.

OF THE COUNTY RECORDER.

SECTION 335. The recorder shall keep his office at the county seat, and he shall record at length, and as speedily as possible, all instruments in writing which may be delivered to him for record, in the manner directed by law.

Duties of.
R. § 358.
C. '51, § 150.

SEC. 336. The same person may be eligible to, and hold the office of county recorder and county treasurer; provided, the number of inhabitants in such county does not exceed ten thousand.

Treasurer eligible.
R. § 359.
C. '51, § 151.

[Eighteenth General Assembly, Chapter 40.]

SEC. 1. No person shall be disqualified for holding the office of county recorder on account of sex.

Women eligible.

CHAPTER 6.

OF THE SHERIFF.

Duties.
R. § 383.
C. '51, § 170.

SECTION 337. The sheriff shall, by himself or his deputies, execute according to law, and return all writs and other legal process issued by lawful authority and to him directed or committed, and shall perform such other duties as may be required of him by law.

Disobedience.
R. § 384.
C. '51, § 171.

SEC. 338. His disobedience of the command of any such process is a contempt of the court from which it issued, and may be punished by the same accordingly, and he is further liable to the action of any person injured thereby.

Jail: charge of.
R. § 385.
C. '51, § 172.

SEC. 339. He has the charge and custody of the jail or other prison of his county, and of the prisoners in the same, and is required to receive those lawfully committed, and to keep them himself, or by his deputy or jailor, until discharged by law.

**Conservators of
the peace.**
R. § 386.
C. '51, § 173.

SEC. 340. The sheriff and his deputies are conservators of the peace, and to keep the same, or to prevent crime, or to arrest any person liable thereto, or to execute process of law, may call any person to their aid, and, when necessary, the sheriff may summon the power of the county.

Attend courts.
R. § 387.
C. '51, § 174.

SEC. 341. The sheriff shall attend upon the district and circuit courts of his county, and while either remains in session he shall be allowed the assistance of such number of bailiffs as either may direct. They shall be appointed by the sheriff, and shall be regarded as deputy sheriffs, for whose acts the sheriff shall be responsible.

The bailiffs here provided for are 554, 561; and such bailiffs may serve entitled to compensation from the a precept for a jury: *The State v. Ar-
thur*, 39-631. amount: *Bringolf v. Polk Co.*, 41-

**Not appear as
attorney or
counsel.**
R. § 388.
C. '51, § 175.

SEC. 342. No sheriff, deputy sheriff, coroner, or constable, shall appear in any court as attorney or counsel for any party, nor make any writing or process to commence, or to be in any manner used in the same, and such writing or process made by any of them shall be rejected.

This section does not prevent the | a penal law: *Santo v. The State*, 2- officers named from making complaint | 165, 221. before a magistrate of the violation of |

Purchase void.
R. § 389.
C. '51, § 176.

SEC. 343. No sheriff, deputy sheriff, coroner, or constable, shall become the purchaser, either directly or indirectly, of any property by him exposed to sale under any process of law, and every such purchase is absolutely void.

**Execute pro-
cess when out
of office.**
R. § 390.
C. '51, § 177.

SEC. 344. Sheriffs and their deputies may execute any process which may be in their hands at the expiration of their office, and, in case of a vacancy occurring in the office of sheriff from any cause, his deputies shall be under the same obligation to execute legal process then in his or their hands, and return the same, as if the sheriff had continued in office, and he and they will remain liable therefor under the provisions of law as in other cases.

SEC. 345. When a sheriff goes out of office, he shall deliver to his successor all books and papers pertaining to the office, and property attached and levied upon, except as provided in the preceding section, and all prisoners in the jail, and take his receipt specifying the same, and such receipt shall be sufficient indemnity to the person taking it.

This section is directory only, and if the attached property, &c., be actually delivered to the incoming sheriff he would become responsible thereto, and the out-going officer would be discharged, although no receipt was given: *McKay v. Thorington*, 15-25; *McKay v. Leonard*, 17-569.

An offer on the part of the out-going sheriff to deliver attached property to the incoming one, and a waiver of delivery by the latter, discharges the former from further responsibility for the safe keeping of the property: *Fockler v. Martin*, 32-117.

SEC. 346. If the sheriff die or go out of office before the return of any process, then in his hands, his successor, or other officer authorized to discharge the duties of the office, may proceed to execute and return the same in the same manner as the out-going sheriff should have done, but nothing in this section shall be construed to exempt the out-going sheriff and his deputies from the duty imposed on them by section three hundred and thirty-seven of this chapter, to execute and return all process in their hands at the time the vacancy in the office of sheriff occurs.

SEC. 347. On the election or appointment of a new sheriff all new process shall be directed to him.

SEC. 348. If the sheriff, who has made a sale of real estate on execution, die, or go out of office before the period of redemption expires, his successor shall make the necessary deed to carry out such sale.

CHAPTER 7.

OF THE CORONER.

SECTION 349. It is the duty of the coroner to perform all the duties of the sheriff when there is no sheriff, and in cases where exception is taken to the sheriff as provided in the next section.

The sureties upon the official bond of the coroner are accountable on such bond for his acts while acting as *ex officio* sheriff: *Tieman v. Haw*, 49-312.

SEC. 350. In all proceedings in the courts of record, where it appears from the papers that the sheriff is a party to the action; or where, in any action commenced or about to be commenced, an affidavit is filed with the clerk of the court, stating that the sheriff and his deputy are absent from the county, and are not expected to return in time to perform the service needed; or stating a partiality, prejudice, consanguinity, or interest, on the part of the sheriff, the clerk or court shall direct process to the coroner, whose duty it shall be to execute it in the same manner as if he were sheriff.

To make a service of notice by the coroner, as such, good, it must appear from the record, that the sheriff was disqualified to act: *Beard v. Smith*, 9-50.

Where the sheriff is disqualified by interest or other personal reason, the coroner, and not the deputy sheriff,

should act: *Minott v. Vineyard*, 11-90. This section applies in criminal as well as in civil cases, and upon the filing of the affidavit here contemplated, the coroner should be directed to act in place of the sheriff: *The State v. Hardin*, 46-623.

Sheriff.
R. § 395.
C. '51, § 185.

SEC. 351. When there is no sheriff, deputy sheriff, or coroner qualified to serve legal process, the clerk of the court may, by writing under his hand and the seal of the court certifying the above fact, appoint any suitable person specially in each case to execute such process, who shall be sworn, but he need not give bond, and his return shall be entitled to the same credit as the sheriff's when the appointment is attached thereto.

Where the disqualification of the sheriff is made known before the issuance of a writ, and also the disqualification of the coroner, it is not objectionable to direct the writ to the person specially appointed: *Minott v. Vineyard*, 11-90.

The credit to be given to the return

of the person so appointed, will depend on the validity of the appointment. In a particular case, the appointment held not to show sufficiently that there was "no sheriff, deputy sheriff, or coroner qualified," &c.: *Currens v. Ratcliffe*, 9-309.

Inquest.
R. § 396.
C. '51, § 186.

SEC. 352. The coroner shall hold an inquest upon the dead bodies of such persons only as are supposed to have died by unlawful means. When he has notice of the dead body of a person supposed to have died by unlawful means, found or being in his county, he is required to issue his warrant to a constable of his county, requiring him to summon forthwith three electors of the county to appear before the coroner at a time and place named in the warrant.

Warrant.
R. § 397.
C. '51, § 187.

SEC. 353. The warrant may be in substance as follows:

STATE OF IOWA,

..... County. }

To any constable of the said county:—In the name of the state of Iowa you are hereby required to summon forthwith three electors of your county, to appear before me at (name the place), at (name the day and hour or say forthwith), then and there to hold an inquest upon the dead body of _____, there lying, and find by what means he died.

Witness my hand this _____ day of _____, A. D. 18—.

A. B., coroner of _____ county.

Service.
R. § 398.
C. '51, § 188.

SEC. 354. The constable shall execute the warrant, and make return thereof at the time and place named.

Jurors.
R. § 399.
C. '51, 189.

SEC. 355. If any juror fails to appear, the coroner shall cause the proper number to be summoned or returned from the bystanders, immediately, and proceed to empanel them and administer the following oath in substance:

"You do solemnly swear (or affirm) that you will diligently inquire, and true presentment make, when, how, and by what means the person whose body lies here dead came to his death, according to your knowledge and the evidence given you."

Subpoenas:
contempta.
R. § 400.
C. '51, § 190.

SEC. 356. The coroner may issue subpoenas within his county for witnesses, returnable forthwith, or at such time and place as he shall therein direct, and witnesses shall be allowed the same

fees as in cases before a justice of the peace, and the coroner has the same authority to enforce the attendance of witnesses, and to punish them and jurors for contempt in disobeying his process, as a justice of the peace has when his process issues in behalf of the state.

SEC. 357. An oath shall be administered to the witnesses in Oath.
substance as follows: R. § 401.
C. '51, § 191.

" You do solemnly swear that the testimony which you shall give to this inquest concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth."

SEC. 358. The testimony shall be reduced to writing under Testimony.
the coronor's order, and subscribed by the witnesses. R. § 401.
C. '51, § 192.

SEC. 359. The jurors having inspected the body, heard the Verdict.
testimony, and made all needful inquiries, shall return to the cor- R. § 403.
oner their inquisition in writing, under their hands in substance C. '51, § 193.
as follows, and stating the matters in the following form sug-
gested, as far as found:

STATE OF IOWA,
..... County. }

An inquisition holden at....., in county,
on the..... day of A. D. 18.... before
..... coroner of the said county, upon the body
of(or a person unknown) there lying dead,
by the jurors whose names are hereto subscribed. The said
jurors upon their oaths do say (here state when, how, by what
person, means, weapon, or accident, he came to his death, and
whether feloniously.)

In testimony whereof the said jurors have hereunto set their
hands, the day and year aforesaid:

(which shall be attested by the coroner.)

SEC. 360. If the inquisition find that a crime has been com- Kept secret.
mitted on the deceased, and name the person whom the jury be- R. § 401.
lieve has committed it, the inquest shall not be made public until C. '51, § 194.
after the arrest directed in the next section.

SEC. 361. If the person charged be present, the coroner may Arrest.
order his arrest by an officer or any other person present, and shall R. § 405.
C. '51, § 195.
then make a wafrant requiring the officer or other person to take
him before a justice of the peace.

SEC. 362. If the person charged be not present, and the cor- Warrant.
oner believes he can be taken, the coroner may issue a warrant to R. § 406.
C. '51, § 196.
the sheriff and constables of the county, requiring them to arrest
the person and take him before a justice of the peace.

SEC. 363. The warrant of a coroner in the above case shall be Same.
of equal authority with that of a justice of the peace, and when R. § 407.
C. '51, § 197.
the person charged is brought before the justice, such justice shall cause an information to be filed against him, and the same proceedings shall be had as in other cases under information, and he shall be dealt with as a person held under an information in the usual form.

SEC. 364. The warrant of the coroner shall recite substantially Form of
the transactions before him and the verdict of the jury of inquest R. § 408.
C. '51, § 198.

leading to the arrest, and such warrant shall be a sufficient foundation for the proceeding of the justice instead of an information.

Inquest: return.

R. § 409.

C. '51, § 199.

Disposition of body.

R. § 410.

C. '51, § 200.

SEC. 365. The coroner shall then return to the district court the inquisition, the written evidence, and a list of the witnesses who testified material matter.

SEC. 366. The coroner shall cause the body of a deceased person which he is called to view, to be delivered to his friends if any there be, but if not, he shall cause him to be decently buried and the expense to be paid from any property found with the body, or, if there be none, from the county treasury, by certifying an account of the expenses, which, being presented to the board of supervisors, shall be allowed by them, if deemed reasonable, and paid as other claims on the county.

When no coroner.

R. § 411.

C. '51, § 201.

SEC. 367. When there is no coroner, and in case of his absence or inability to act, any justice of the peace of the same county is authorized to perform the duties of coroner in relation to dead bodies, and in such case he may cause the person charged to be brought before himself by his warrant, and may proceed with him as a justice of the peace.

Surgeons.

R. § 412.

C. '51, § 202.

SEC. 368: In the above inquisition by a coroner, when he or the jury deem it requisite, he may summon one or more physicians or surgeons to make a scientific examination, and shall allow in such case a reasonable compensation instead of witness fees.

The compensation of such witnesses is to be fixed by the coroner, or justice acting in his place, and his jurisdiction in such matter is exclusive. | He may be compelled by mandamus to act, but no appeal is provided: *Cushman v. Washington*, 45-255; *Sanford v. Lee Co.*, 49-148.

CHAPTER 8.

OF THE COUNTY SURVEYOR.

Duties.

R. § 413.

C. '51, § 203.

Same.

R. § 414.

C. '51, § 204.

Field notes.

R. § 415.

C. '51, § 205.

Corners.

R. § 416.

C. '51, § 206.

SECTION 369. The county surveyor shall make all surveys of land within his county which he may be called upon to make, and his surveys shall be held as presumptively correct.

SEC. 370. The field notes and plats made by the county surveyor shall be transcribed into a well bound book under the supervision of the surveyor, when desired by a person interested and at his expense.

SEC. 371. Previous to making any survey, he shall furnish himself with a copy of the field notes of the original survey of the same land, if there be any in the office of the county auditor, and his survey shall be made in accordance therewith.

SEC. 372. He is required to establish the corners by taking bearing trees and noting particularly their course and distance, but if there be no trees within reasonable distance, the corners are to be marked by stones firmly placed in the earth, or by mounds.

SEC. 373. In the re-survey and sub-divisions of lands by county surveyors, their deputies, or other persons, the rules prescribed by acts of congress and the instructions of the secretary of the interior, shall be in all respects followed.

SEC. 374. The county surveyor shall, when requested, furnish the person for whom the survey is made with a copy of the field notes and plat of the survey, and such copy certified by him, and also a copy from the record, certified by the county auditor, with the seal, shall be presumptive evidence of the survey and of the facts herein required to be set forth, and which are stated accordingly, between those persons who join in requesting it, and any other person then concerned who has reasonable notice that such a survey is to be made and the time thereof.

SEC. 375. The board of supervisors is required to furnish a substantial, well bound book, in which the field notes and plats made by the county surveyor may be recorded.

SEC. 376. The plat and record shall show distinctly of what piece of land it is a survey; at whose personal request it was made, the names of the chainmen, and that they were approved and sworn by the surveyor, and the date of the survey; and the courses shall be taken according to the true meridian, and the variation of the magnetic from the true meridian stated.

SEC. 377. The necessary chainmen and other persons must be employed by the person requiring the survey done, unless otherwise agreed; but the chainmen must be disinterested persons and approved of by the surveyor, and sworn by him to measure justly and impartially to the best of their knowledge and ability.

SEC. 378. County surveyors, when establishing defaced or lost land corners or lines, may issue subpoenas for witnesses and administer oaths to them, and all fees for service of officers and attendance of witnesses shall be the same as in proceedings before justices of the peace.

COUNTY OFFICERS TO REPORT INFORMATION OR STATISTICS.

[Eighteenth General Assembly, Chapter 22.]

SEC. 1. It is hereby made the duty of each county officer, whenever called upon by the governor or either house of the general assembly so to do, to communicate to the governor, or such house, any information that may be in his possession as such officer, and to furnish any statistics at his command when thus called upon.

SEC. 2. In order to enable the clerk of the district court properly to comply with the provisions of section two hundred and three of the code, it is made the duty of the county auditor to report to said clerk, before the first day of November in each year, the expenses of the county for criminal prosecutions during the year ending the thirtieth day of September preceding, including, but distinguishing the compensation of district attorney.

SEC. 3. It is hereby made the duty of the clerk of the district court, in preparing the report required by said section two hundred and three of the code, to make such report for the year ending the 30th day of September preceding.

Penalty for
failure to per-
form such
duties.

SEC. 4. Failure on the part of any officer to perform any duty required of him by this act, shall render him liable to prosecution and punishment for misdemeanor.

CHAPTER 9.

OF TOWNSHIPS AND TOWNSHIP OFFICERS.

Form town-
ships: change
same.
R. § 441.
C. § 51, § 219.
14 G. A. ch. 122.

SECTION 379. The board of supervisors of each county shall divide the same into townships, as the convenience of the citizens may require, accurately defining the boundaries thereof, and may from time to time make such alterations in the number and boundaries of the townships as it may deem proper; *provided*, however, that if the congressional township lines are not adopted and followed, the board of supervisors shall not change the lines of any civil township so as to divide any school district or sub-district, unless a majority of the voters of such district or sub-district shall petition therefor.

Must be ten
voters.
9 G. A. ch. 73,
§ 1.

For similar provision as to dividing school districts, see § 1799.

SEC. 380. No township shall be organized in which at the time of organization there shall not be at least ten legal voters; *provided*, that each county shall have one civil township.

Changes re-
corded.
R. § 442.
C. § 51, § 220.

SEC. 381. The description of the boundaries of each township, and of all alterations in them, and of all new townships, shall be recorded in full in the records of the board of supervisors and of the township.

When town-
ship contains a
city or town.
14 G. A. ch. 52,
§ 1, 2.

OF DIVIDING TOWNSHIPS.

SEC. 382. When any township has within its limits an incorporated city or town, the electors of such township residing without the limits of such city or town, may, at the January, April, or June session of the board of supervisors of the county, petition to have such township divided into two townships; the one to embrace the territory without, and the other the territory within such corporate limits; which petition shall be accompanied by the affidavit of three individuals, to the effect that all the signatures to such petition are genuine, and that the signers thereof are all legal voters of said township, residing outside said corporate limits.

Notice.
Same, § 3.

SEC. 383. Notice of the time when such petition will be presented, shall be given by two publications in a weekly newspaper published in the township, the last of which publication shall be at least ten days prior to the time fixed for the presentation of such petition; or if no paper is printed in such township, or the papers therein printed refuse to make such publication, the notice herein contemplated shall be given by posting in five public places in the township, two of which shall be without and three within such corporate limits.

Petition: sign-
ers.
Same, §§ 4, 5.

SEC. 384. If such petition is signed by a majority of the electors of such township residing without the corporate limits of such

city or town, the board of supervisors shall divide such township into two townships, as prayed therein, but except for election purposes, including the appointment of all judges and clerks of election rendered necessary by the change, such division shall not take effect until the first Monday of January next ensuing.

SEC. 385. When a new township is formed, the board of supervisors shall call the first township election, to be held at such place as it may designate, on the day of the next general election. First election.
R. § 453.
C. 51, § 231.

SEC. 386. The auditor shall issue a warrant for such first election, stating the time and place of the same, the officers to be elected, and any other business which is to be attended to; and no other business shall be done than such as is so named. Warrant for.
R. § 454.
C. 51, § 232.

SEC. 387. Such warrant may be directed to any constable of the county, or to any citizen of the same township, by name, and shall be served by posting up copies thereof in three of the most public places in the township fifteen days before the day of the election; the original warrant shall be returned to the presiding officer of the election, to be returned to the clerk when elected, with a return thereon of the manner of service, verified by oath if served by any other than an officer. How served.
R. § 455.
C. 51, § 233.

SEC. 388. The election shall be conducted as other township elections, and the electors shall proceed to elect the officers named in this chapter. Election.
R. § 457.
C. 51, § 235.

OFFICERS—DUTIES.

SEC. 389. In each township there shall be elected three trustees, one clerk, one assessor, two constables, and two justices of the peace, but where a city or incorporated town is situate in a township, the trustees of the township may order the election of one or two additional justices and constables, and at least one justice and constable shall reside within the limits of such city or town. Officers of.
R. §§ 443, 726.
C. 51, § 221.

SEC. 390. In any township a part of which is included within the incorporated limits of any incorporated city or town, the qualified voters of such township residing without the corporate limits of such city or town, shall at the general election in each year elect an assessor in the same manner as provided by law for the election of township assessors, and the qualified voters of each incorporated city and town, whether such city or town embraces one or more townships or parts of townships, shall, at the municipal election in such city or town, elect one assessor for such city or town, and such assessors shall be limited in the discharge of their official duties to the limits in which they are elected, and such city and town assessors shall hold their office for one year from the first of January next ensuing.

Provided, that any incorporated city as above described, having a population of ten thousand inhabitants or over, shall have the right to elect one or more assessors, not to exceed three, and such assessor or assessors shall in all respects perform the same duties as now required of assessors, and in like manner be subject to the same laws and penalties thereunder, and shall each receive the same compensation as now provided for assessors, and shall give bond and qualify for the duties required of them as now required by law, and shall be elected at the time and for the terms above City may elect more than one assessor.
Election qualification and compensation of assessors in such cases.

City council to provide, and the city council of such incorporated city shall determine by resolution at least five weeks before the time for electing said assessor or assessors, whether it shall be necessary to elect one, two, or three assessors for the ensuing term, and thereupon the mayor of such city shall make proclamation of the said determination of the council in like manner, and at the same time that he shall proclaim the election of the other officers to be elected at said election.

Division of work between assessors. (SEC. 2.) It shall be the duty of such assessors, if more than one shall have been elected, to agree between themselves for such systematic distribution of their work as will most efficiently further the satisfactory completion of the same within the time prescribed by law; and in assessing the property of such incorporated city, each shall faithfully and industriously work to that end, and for any failure or delinquency in that respect on the part of any or all of said assessors, he or they shall be liable as provided by section eight hundred and twenty-seven of the code of 1873.

[A substitute for the original section, 16th G. A., ch. 6, with the proviso and (Sec. 2) added by 18th G. A., ch. 201.]

Under the original section held, that an assessor elected by the city, as therein prescribed, was not a city, but a township officer: *Kinnie v. City of Waverly*, 42-486.

This section, both as it originally stood, and as re-enacted, by the 16th G. A., applies only to townships containing cities incorporated under the general incorporation law, and

not those existing under special charter: *The State v. Finger*, 46-25.

Where two townships being included within the corporate limits of a city, comprise but one assessorial district, the county board of equalization cannot equalize taxation as between such townships, but can only act upon the whole district: *Getchell v. Board of Supervisors*, 51-107.

Place of election.
R. § 444.
C. '51, § 222.

SEC. 391. The trustees shall designate the place where elections will be held, and whenever a change is made from the usual place of holding elections in the township, notice of such change shall be given by posting up notices thereof in three public places in the township, ten days prior to the day on which the election is to be held.

Record.
R. § 445.
C. '51, § 223.
Trustees: duties.
R. § 446.
C. '51, § 224.

SEC. 392. They shall cause a record to be kept of all their proceedings.

SEC. 393. The township trustees are the overseers of the poor, fence viewers, and the township board of equalization and board of health, and shall have charge of all cemeteries within the limits of their township dedicated to public use when the same is not controlled by other trustees or incorporated bodies.

Refusing to serve.
R. § 447.
C. '51, § 225.

[Further as to cemeteries, see acts inserted following § 420.]

SEC. 394. Any person elected to a township office and refusing to qualify and serve, shall forfeit the sum of five dollars, which may be recovered by action in the name of the county, to the use of the school fund in the county, but no person shall be compelled to serve as a township officer two terms in succession.

Clerk: duties.
R. § 448.
C. '51, § 226.

SEC. 395. The township clerk shall keep accurate records of the proceedings and orders of the trustees, and perform such other acts as may be required of him by law.

The complaint to trustees as fence viewers is not part of their proceedings, and need not be in writing, nor of record: *Tubbs v. Ogden*, 46-134.

SEC. 396. He is authorized to administer the oath of office to Oaths.
all the township officers, and he shall make a record thereof, and R. § 449.
also of all who file certificates of their having taken the oath C. '41, § 226.
before any other officer authorized to administer the same.

[Sixteenth General Assembly, Chapter 110.]

SEC. 1. Township clerks shall have power to administer oaths Power to ad-
to township officers, judges of election, clerks of election, and minister oaths.
highway supervisors, for services rendered in their respective townships.

SEC. 397. The clerk, immediately after the election of officers Notify auditor.
in his township, shall send a written notice thereof to the county R. § 450.
auditor, stating the names of the persons elected and the time C. '51, § 223.
of the election, and shall enter the time of the election of each officer in the township record.

[Sixteenth General Assembly, Chapter 50.]

SEC. 1. Hereafter it shall be the duty of township clerks To post state-
in each county in the state, on the morning of the day of each
general election, and before the hour for opening the polls, to
post up at the place where such general election is to be held in
his township, a statement, in writing, showing all receipts of
money and disbursements in his office, for the preceding year,
such statement to be certified by the trustees of the said township. Constables:
Duty.

SEC. 398. The constables shall serve warrants, notices, and R. § 451.
other process, lawfully directed to them by the trustees or clerk C. '51, § 223.
of the township, or any court, and perform such other duties as
are or may be required by law.

SEC. 399. Constables are ministerial officers of justices of the peace. Same.
R. § 452.
C. '51, § 230.

TOWNSHIP COLLECTOR.

SEC. 400. There shall be elected at the general election in When elected.
every year, a township collector in and for each organized town- 12 G. A. ch. 137.
ship in every county, except the township in which the county § 1.
seat is located, who shall hold office for one year; provided, the
board of supervisors of the county shall order the election of town-
ship collectors as in this chapter hereinafter provided.

SEC. 401. He shall qualify as other elective officers, and give Qualification
a bond to the county in a penal sum equal to double the whole of.
amount of tax to be by him collected, which shall be presented Same, § 2.
to and approved by the board of supervisors of the county and
recorded the same as the bond of county officers.

SEC. 402. The auditor, in counties where township collectors Auditor's duty.
are elected, shall make out a duplicate tax-list of each township, Same, § 4.
and deliver the same, with the original, to the county treasurer.

SEC. 403. The county treasurer shall deliver to each township Treasurer's
collector in the county, as soon as he has qualified, such duplicate powers
tax-list of his township and take his receipt therefor, specifying of collector.
the total amount of the tax charged in such list, and charge the Same, § 5.
same over to each township collector in a book to be kept for that
purpose; and such duplicate tax-list, when so made out and de-
livered to the township collectors, may be used as an execution,
and shall be sufficient authority for them to collect the taxes

therein charged in any township in the county by distress and sale or otherwise, as now provided by law for the collection of taxes by the county treasurer; and the county treasurer shall not receive or collect any of the taxes charged in any duplicate tax list so delivered, except the tax of non-residents of the township, until the same has been returned to him as hereinafter provided. The said county treasurer shall procure for and deliver to each township collector with said tax-list, a tax receipt-book, with a blank margin or stub, upon which the said township collector shall enter the number and date of the tax-receipt given to the taxpayer, the amount of tax and by whom paid, which said tax receipt book shall be returned to the county treasurer, with the said duplicate tax-list, as hereinafter provided.

A warrant is not required to be attached to such duplicate tax list: *Shaw v. Orr*, 30-355, 361.

To give notice.
Same, &c.

SEC. 404. Upon the receipt of said tax-lists, each township collector, immediately, shall cause the notice of the reception thereof to be posted up in some conspicuous place in every school-district in the township, and in every ward of any city therein, so located as will be most likely to give notice to the inhabitants thereof, and also publish such notice for four weeks in one or more weekly papers, if any published in the township, designating in such notice a convenient place in such township where he will attend from nine o'clock A. M. to four o'clock P. M., at least once in each week, on a day to be specified in said notice until March first following, for the purpose of receiving payment of taxes, and each collector shall attend accordingly, and he shall proceed to collect and receipt for all taxes therein charged, in the same manner as now provided by law for the collection of taxes by the county treasurer, and all the laws which apply to and govern the collection of taxes, by county treasurers, shall apply to and govern the collection of taxes, by said township collector, when not inconsistent with the provisions of this chapter.

Demand taxes:
distress and
sale.
Same, &c.

SEC. 405. Every collector, after the first of March in each year, shall call at least once on each person whose tax remains unpaid, or at the place of his usual residence, if in the township for which such collector has been chosen, and shall demand the payment of the taxes charged to him on his property. In case any person shall attempt to remove from the township, property on which tax is due, without leaving sufficient to pay such tax, at any time after the duplicate comes into his hands, the collector shall attach such property and hold the same until the tax is paid, or make the tax out of such property. In case any person shall refuse or neglect to pay the tax, or shall have removed from said township, the collector shall levy the same by distress and sale of the goods and chattels of the person who ought to pay the same, or of any goods and chattels on which the said tax was assessed, wheresoever the same may be found within the county. The collector shall give public notice of the time and place of sale, and of the property to be sold, at least six days previous to the sale, by advertisements to be posted up in at least three public places in the township where such sale shall be made. The sale shall be made by public auction, and if the property shall be sold for more than the amount of the tax,

penalty, and costs, the surplus shall be returned to the person in whose possession such property was when the distress was made.

SEC. 406. The township collectors shall make monthly statements to the county treasurer of the amount of tax collected by them on each fund, and pay the same over to the county treasurer and take his receipt therefor; and they shall complete the collection of the tax charged in the said duplicate tax lists, by distress and sale or otherwise, on or before the first Monday in May next after the receipt of said duplicate tax list, and pay over the amount so collected to the county treasurer and return to him the said tax-lists and receipt-books, and make a full and complete settlement for the taxes so collected with the county treasurer, which settlement shall be subject to the examination and correction by the board of supervisors of the county at its next session.

The provision as to return of tax-list to the treasurer by the first Monday in May, is merely directory and does not limit his authority to act after that time: *Shaw v. Orr*, 30-355.

SEC. 407. Each township collector shall receive for his services the following compensation: 1. Two per cent. of all sums collected by him on the first two thousand dollars, and one per cent. on all sums in excess thereof collected by him otherwise than by distress and sale, to be paid out of the county treasury; 2. Five per cent. upon all taxes collected by him by distress and sale, which percentage and costs shall be collected of the delinquent tax-payer, and the same fees in addition to the said five per cent. as constables are entitled to receive for the sale of property on execution.

SEC. 408. After the return of said duplicate tax-lists and settlement as provided above, the county treasurer shall receive, receipt for, and collect any unpaid taxes in the county, and shall proceed to advertise and sell all the real estate in the county upon which the taxes have not been paid, for the unpaid taxes thereon as provided by law.

SEC. 409. If any of the taxes mentioned in the tax-list shall remain unpaid, and the collector shall not be able to collect the same, he shall deliver to the county treasurer an account of the taxes so remaining due; and upon making oath before the county auditor, or in case of his absence before any justice of the peace, that the sums mentioned in such account remain unpaid, and that he has not, upon diligent inquiry, been able to discover any goods or chattels belonging to or in the possession of the person charged with or liable to pay such sums, whereon he could levy the same, he shall be credited by the county treasurer with the amount thereof, but such oath and credit shall only be presumptive evidence of the correctness thereof.

SEC. 410. Such collector and his sureties shall be liable for the loss by theft or otherwise, of any money collected by him and in his possession.

SEC. 411. The board of supervisors of each county in the state having a population exceeding seven thousand inhabitants, as shown by the last preceding census, are hereby authorized and empowered to order an election of a township collector in each organized township in their county, by a resolution to that effect,

Make monthly statements.
Same, § 8.

Compensation.
Same, § 9.

Unpaid taxes.
Same, § 10.

When there is failure to collect.
Same, § 11.

Liability.
Same, § 13.

When election of collector ordered.
Same, § 12.

passed at their regular meeting in June in any year by a two-thirds vote of the board, which shall be spread upon the records of the board, and the first election of township collectors in such county shall be held at the next general election after the passage of such resolution, and every year thereafter until the said resolution is repealed by the board, by a like vote, at their regular meeting in June in any year. They shall be voted for and elected in the manner of the other township officers, and in all counties in the state where such resolution is not in force, as provided in this section, then sections four hundred and one to four hundred and eleven inclusive, of this chapter shall be inoperative and of no effect.

CHANGING NAME OF TOWNSHIP.

How changed.
9 G. A. ch. 80.
§ 1.

SEC. 412. Any township desirous of changing its name, may petition the board of supervisors of the county in which such township is situated; and if it shall appear to said board that a majority of the actual resident voters of such township are in favor of such change, such board shall cause three notices to be posted up in three of the most public places of such township, for at least thirty days previous to the next session of said board, which notice shall state the fact that a petition has been presented to said board by the citizens of said township praying for a change of the name of the same, and the name prayed for in said petition, and that unless those interested in the change of such name shall appear at the next regular session of said board and show cause why said name shall not be changed, there will be an order made granting such change, which notice shall be attested by the auditor.

Name.
Same, § 2.

SEC. 413. If, at the time fixed for the hearing of said petition, said board is satisfied that there is a majority in favor of such change of name, said board shall make an order granting such change, which shall be attested by the auditor and recorded in the office of the recorder of the county where such township is situated.

Name.
Same, § 2.

SEC. 414. The cost of such change and recording shall be paid by the petitioners. But should it appear to said board that a majority of the citizens of such township are opposed to such change, such petition shall be dismissed and the cost of the proceeding taxed against the petitioners.

BOARD OF HEALTH.

Board of health
11 G. A. ch. 107,
§ 1, 2

SEC. 415. The township trustees shall have power to make whatever regulations they deem necessary for the protection of the public health, and respecting nuisances, sources of filth, and causes of sickness within their respective townships; *provided*, that their jurisdiction as such board shall not extend to any city or incorporated town situated therein.

Regulations
published.
Same, § 3.

SEC. 416. Notice shall be given of all regulations made, by publishing the same in a newspaper published in the township, or, where there is no newspaper, by posting in five public places therein.

SEC. 417. The trustees may order the owner or occupant, at his own expense, to remove any nuisance, source of filth, or cause of sickness found on private property within such time as they deem reasonable, and if such person neglects to do so he shall forfeit a sum of not exceeding twenty-five dollars for every day during which he knowingly permits such nuisance or cause of sickness to remain after the time prescribed for the removal thereof. The order shall be in writing, and served by any constable of the town in the usual way of serving notices in civil suits. If the owner or occupant fails to comply with such order, the trustees may cause the nuisance, source of filth, or cause of sickness to be removed, and all expenses incurred thereby shall be paid by such owner or occupant.

SEC. 418. The trustees shall have power to employ all such persons as shall be necessary to carry into effect the regulations adopted and published according to the powers vested in the trustees and to fix their compensation; to employ physicians in case of poverty, and to take such general precautions and actions as they may deem necessary for the public health.

SEC. 419. Any person who shall wilfully violate any of the regulations so made and published by the trustees, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine or imprisonment, such fine not to exceed one hundred dollars, and such imprisonment not to exceed thirty days.

SEC. 420. All expenses, now or hereafter incurred by the trustees of a township in the exercise of the powers heretofore or herein conferred, shall be borne by the township. The trustees shall certify the amount required to pay such expenses to the board of supervisors of the county, and that board shall, at the time it levies the general taxes, and in addition thereto, levy on the property of such township a sufficient tax to pay the amount so certified by the trustees. The tax so levied shall be collected by the county treasurer with the other taxes, and be by him paid over to the township clerk.

RELATING TO CEMETERIES.

[Sixteenth General Assembly, Chapter 130.]

SEC. 1. Where there is located in any township one or more cemeteries the owner or owners of the same, or any party or parties owning an interest therein, may cause the same to be surveyed, platted and laid out into sub-divisions and lots, numbering the same by progressive numbers, giving the dimensions, length and breadth thereof, with reference to known or permanent monuments to be made; and which plat shall accurately describe all the sub-divisions of the tract of land used or designed to be used as a cemetery; said plat shall be recorded in the office of the county recorder, and filed with and recorded by the township clerk and preserved by him among the records of his office.

SEC. 2. All conveyances of sub-divisions or lots of a cemetery thus platted, shall be by deed from the proper owner, which deed shall be recorded with the township clerk in a book kept by him for that purpose, for the recording of which the said clerk shall be entitled to a fee of fifty cents for each instrument recorded, to be paid by the party desiring the record made.

Power: how
executed.
Same, §§ 5, 6, 7.

Use means nec-
essary.
Same, § 8.

Violation: pun-
ishment.
Same, § 9.

Expenses: how
paid.
Same, §§ 10, 11.

Cemeteries
may be
platted.

And plat filed
with town-
ship clerk.

Lots to be
conveyed by
deed to be
recorded by
tp. clerk.

Trustees may condemn any lands.

To pay for lands so condemned.

Officers in control of, may improve subject to by-laws.

Penalty for injuring or defacing graves, etc.

Also liable to action for trespass.

Trustees may appoint watchmen.

SEC. 3. The township trustees are hereby empowered to condemn or purchase and pay for out of the general fund, and enter upon and take any lands within the territorial limits of such township for the use of cemeteries in the same manner as is now provided for incorporated cities and towns.

SEC. 4. They shall at the regular meeting in April, levy a tax sufficient to pay for any such lands so condemned or purchased, or for the necessary improvement and maintenance of cemeteries thus established. They shall have power to control any such cemeteries, or appoint trustees for the same or sell it to any private corporation for cemetery purposes.

[Seventeenth General Assembly, Chapter 106.]

SEC. 1. The trustees, board of directors or other officers having the custody and control of any cemetery in this state shall have power, subject to the by-laws and regulations of said cemetery, to inclose, improve and adorn the grounds of such cemetery, to construct avenues in the same, to erect proper buildings for the use of said cemetery, to prescribe rules for improving or adorning the lots therein, or for the erection of monuments or other memorials of the dead upon such lots; to prohibit any use, division, improvement or adornment of a lot which they may deem improper.

SEC. 2. Any person who shall wilfully and maliciously destroy, mutilate, deface, injure or remove any tomb, vault, monument, gravestone or other structure, placed in any public or private cemetery in this state, or any fences, railing or other work for the protection or ornamentation of said cemetery, or of any tomb, vault, monument or gravestone, or other structure aforesaid, on any cemetery lot within such cemetery, or shall wilfully and maliciously destroy, cut, break, or injure any tree, shrub, plant, or lawn within the limits of said cemetery, or shall drive at unusual and forbidden speed over the avenues or roads in said cemetery, or shall drive outside of said avenues and roads and over the grass or graves of said cemetery, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof before any court of competent jurisdiction, be punished by a fine of not less than five dollars, nor more than one hundred dollars, or by imprisonment in the county jail for a term of not less than one nor more than thirty days, in the discretion of the court, and such offender shall also be liable in an action of trespass in the name of the person or corporation having the custody and control of said cemetery grounds, to pay all such damages as have been occasioned by his unlawful act or acts, which money, when recovered, shall be applied by said person or corporation to the reparation and restoration of the property so injured or destroyed, if the same can be so repaired or restored.

SEC. 3. It shall be lawful for the trustees, directors, or other officers having the custody and control of any cemetery in this state, to appoint as many day and night watchmen of their grounds as they may think expedient; and such watchmen, and also all their sextons, superintendents, gardeners, and agents stationed upon or near said grounds, are hereby authorized to take and subscribe before any mayor of a city, or justice of the peace of the township where such cemetery is situated, an oath of office simi-

lar to that required by law of constables, and upon the taking of such oath, such watchmen, sextons, superintendents, gardeners and agents, shall have, exercise and possess all the powers of police officers within and adjacent to the cemetery grounds, and they and each of them shall have power to arrest any and all persons engaged in violating the laws of this state in reference to the protection, care and preservation of cemeteries, and of the trees, shrubbery, plants, structures, grass and adornments therein, and to bring such persons so offending before any justice of the peace within such township, to be dealt with according to law.

With powers
of police offi-
cers.

CHAPTER 10.

OF CITIES AND INCORPORATED TOWNS.

SECTION 421. When the inhabitants of any part of any county not embraced within the limits of any city or incorporated town shall desire to be organized into a city or incorporated town, they may apply by petition in writing, signed by not less than twenty-five of the qualified electors of the territory to be embraced in the proposed city or incorporated town, to the circuit court of the proper county, which petition shall describe the territory proposed to be embraced in such city or incorporated town, and shall have annexed thereto an accurate map or plat thereof and state the name proposed for such city or incorporated town, and shall be accompanied with satisfactory proofs of the number of inhabitants within the territory embraced in said limits.

[As amended by 18 G. A., ch. 79, reducing the number of signers necessary to the petition.]

SEC. 422. When such petition shall be presented, the court shall forthwith appoint five commissioners who shall at once call an election of all the qualified electors residing within the territory embraced within said limits as described and platted, to be held at some convenient place within said limits, the notice for which shall be given by publication in some newspaper published within said limits, if any there be, for three successive weeks, and by posting notices in five public places within said limits; said posting and the first publication to be not less than three weeks preceding such election. Such notice shall specify the place and time of such election and a description of the limits of said proposed town or city, and that a description and plat thereof are on file in the office of the clerk of the circuit court.

Commissioners
appointed:
election notice
Same, § 8.

Said commissioners shall act as judges and clerks of the election, and shall qualify as required by law for judges and clerks of township elections, and shall report the result of the ballot to the court aforesaid. The ballot used at said election shall be, "For incorporation," "Against incorporation."

[The word "township" as used in the third line from the bottom of this section is "county" in the printed code; but is as here given in the original bill.]

Result of election published in papers where filed.
Same, § 4.

SEC. 423. If a majority of the ballots cast at such election be in favor of such incorporation, the clerk shall, immediately on the return of the commissioners being filed in his office, give notice of the result by publication in a newspaper, or, if no newspaper be published in the county, by posting in five public places within the limits of the proposed city or town; and in such notice he shall designate to which of the classes of incorporation hereinafter prescribed, such city or town shall belong. A copy of the notice, with proper proof of its publication, shall be filed with the papers, and a certified copy of all papers and record entries relating to the matter on file in the clerk's office, shall be filed in the recorder's office of the county and in the office of the secretary of state.

When complete.
Same, § 5.

SEC. 424. When certified copies are made and filed as required by the preceding section, and officers are elected and qualified for such city or town as hereinafter provided, the incorporation thereof shall be complete; whereof notice shall be taken in all judicial proceedings.

First election of officers: notice to be given.
Same, § 6.

SEC. 425. When the incorporation of such city or town is completed, the commissioners shall give notice for two consecutive weeks of the time and place of holding the first election of officers therefor by publication in a newspaper, or, if none be published within the limits of such city or town, by posting in five public places within the limits of the same. At such election the qualified electors residing within the limits of such city or town shall choose officers therefor, to hold until the first annual election of officers according to its grade, as hereinafter in this chapter prescribed. The commissioners shall act as judges and clerks of the election, and otherwise it shall be conducted and the officers elected thereat shall be qualified in the manner prescribed by law for the election and qualification of township officers.

[The words "of such city or town" as they stand in the printed code between "electors" and "residing" in the seventh line of the section are not in the original.]

CONTIGUOUS TERRITORY ANNEXED.

Mode of procedure.
R. § 1038.

SEC. 426. When the inhabitants of a part of any county adjoining any city or town shall desire to be annexed to such city or town, they may apply by petition in writing to the circuit court of the proper county, signed by not less than a majority of the electors residing within the territory proposed to be annexed; which petition shall state at whose instance it is presented, and shall be accompanied by an accurate plat or map of such territory.

It is not competent, in the petition of certain property from city taxes, for incorporation, to provide for the and such provision is a nullity: *Hayzlett v. City of Mt. Vernon*, 33-229.

Same.
R. § 1039.

SEC. 427. Like proceedings, as nearly as applicable, shall be had on such petition as are prescribed in sections four hundred and twenty-two and four hundred and twenty-three of this chapter, provided, that notice of the election shall also be served on the mayor or other presiding officer of the town or city to which the annexation is proposed, and such election shall be held in the territory proposed to be annexed.

SEC. 428. The council or trustees of said city or town may give the consent thereof to such annexation, or they may, in their discretion, provide by ordinance or resolution for submitting to the electors at the next annual election of municipal officers the question whether such annexation shall be made; and if such consent be given, or if a majority of the electors of such city or town voting at such election shall vote in favor of annexation, then on the return of such vote to the proper authority of such city or town, a resolution or ordinance shall be adopted or passed declaring that the territory described in the petition has been annexed to and is a part of such city or town; and the clerk or recorder of the said city or town shall make out two copies of the petition, plat, orders of the circuit court, abstract of votes, and resolutions or ordinances in relation to such annexation, with a certificate that the same are correct, attested by the seal of such city or town, and he shall deliver one of said copies to the recorder of the county, who shall, having first made record thereof in the proper books of record, file and preserve the same, and the other of said copies shall be forwarded by the clerk or recorder of said city or town to the secretary of state.

SEC. 429. So soon as said resolution or ordinance declaring such annexation has been adopted, and the said copies transmitted, delivered, and recorded, the said territory shall be deemed and taken to be a part and parcel of the said city or town, and the inhabitants residing therein shall have and enjoy all the rights and privileges of the inhabitants within the original limits of such city or town.

[Eighteenth General Assembly, Chapter 56.]

SEC. 1. In addition to the methods now provided by law for extending city limits, wherever the owner or owners of lands adjoining the limits of any city of the first or second class, organized under the general laws of the State of Iowa, shall desire to have their lands brought within the limits of such city, they may apply to the city council of such city to have the limits of the city extended so as to include such lands, and shall attach to the application a map of such lands, showing their situation, with respect to the existing limits of the city. If the city council shall assent to the extension of the limits of the city, as applied for, a minute thereof shall be indorsed upon the map by the city clerk, and the same shall then be acknowledged by the owner and recorded in the office of the recorder of the proper county, as provided in section five hundred and sixty of the code. Thereafter the limits of the city shall be extended so as to conform to the line proposed and so assented to by the city council.

BY CORPORATION.

SEC. 430. When any municipal corporation shall desire to annex any contiguous territory thereto, not embraced within the limits of any city or town, it shall be lawful for the trustees or council of the corporation, by an ordinance passed for that purpose at least one month before the regular annual election, to submit the question of annexation to the qualified electors of such corporation; and if a majority of the electors of the corporation voting

When corporation
desires to
annex territory:
made of
procedure.
R. & 1042

on the question shall vote in favor of such annexation, the council or trustees of such corporation shall present to the circuit court a petition praying for such annexation, which petition shall describe the territory proposed to be annexed to such municipal corporation, and have attached thereto an accurate map or plat thereof, and like proceedings shall be had upon said petition as are provided in sections four hundred and twenty-two and four hundred and twenty-three of this chapter, so far as the same may be applicable; and if the result of the election be favorable to the proposed annexation, the same record shall be made as provided in said sections, and thereupon the said contiguous territory proposed to be annexed shall be in law deemed and taken to be included in, and shall be a part of said municipal corporation, and the inhabitants thereof shall in all respects be citizens thereafter of the said municipal corporation.

Annexing contiguous territory which has been laid out in lots or parcels to incorporated city.

SEC. 431. When any incorporated city shall desire to annex to such corporation any abutting and contiguous territory thereto, which is not embraced within the limits of any city, and which territory has been laid out in lots or parcels containing two acres or less, the council of such corporation may present to the circuit court of the county in which such city is situate, a petition setting forth the facts and describing the territory that is desired to be annexed, and that the same has been laid out as above mentioned, together with the names of each owner of any portion of such territory, without describing at length, if there is more than one such owner, the particular portion of such territory owned by each, which petition shall have attached thereto a map or plat of such territory. A notice of the filing of such petition shall be served by publication in one daily or weekly newspaper published in such city, and by posting in five public places in the territory outside of said city for the period of four weeks; and the corporation shall be plaintiff and said owners defendants, and issues joined and the cause tried in the ordinary manner as far as applicable, except that no judgment for costs shall be rendered against any defendant who does not make any defense. If the court find the allegations of the petition to be true, and that justice and equity require that said territory or any part thereof should be annexed to such corporation, a decree shall be entered accordingly, and from the time of entering such decree, the territory therein described shall be included in and become a part of such corporation. The powers conferred under the provisions of this section shall also apply to cities acting under special charters.

This section is not void as conferring legislative power upon the circuit court in violation of the Constitution. Art. 3, § 1; nor is the provision that

this section shall apply to cities acting under special charter, controlled or neutralized by § 551: *City of Burlington v. Lebrick*, 43-252.

When corporations desire to unite with each other.
R. § 1044.

SEC. 432. When any city or incorporated town shall desire to be annexed to another and contiguous city or incorporated town, the council or trustees of each of such cities or towns, shall appoint three commissioners to arrange and report to such council or trustees respectively the terms and conditions on which the proposed annexation can be made; and if the council or trustees of each of such cities or towns, approve of the terms and condi-

tions proposed, they shall, by proper ordinance, so declare; and thereupon the council or trustees of each of such cities or towns, by ordinance passed, and one publication had thereof at least ten days prior to the general annual election therein, may submit the question of such annexation, upon the said terms and conditions so proposed, to the electors of their respective cities or towns, and if a majority of the electors of each vote in favor of such annexation, the council or trustees of each shall, by proper ordinance, so declare; and a certified copy of the whole proceedings for annexation of the city or town to be annexed being filed with the clerk or recorder of the city or town to which the annexation is made, the latter shall file with the secretary of state and in the recorder's office of the county, a certified copy of all proceedings had by both of such cities or towns in the matter of such annexation.

[As amended by 17th G. A., ch. 3, § 1, inserting the clause as to publication of ordinance]

SEC. 433. When certified copies of the proceedings for annexation are filed as contemplated in the preceding section, the annexation shall be deemed complete, and the terms and conditions mentioned in section 432 of the code shall be part of the law for the government of the city or town to which annexation is made, and said city or town shall have the power and it shall be its duty to pass such ordinances, not inconsistent with law, as will carry into effect and maintain the terms of such annexation, and thereafter the city or town annexed shall be governed as part of the city or town to which the annexation of it is made; and any citizen of the annexed city or town may institute and maintain legal proceedings to compel the city or town, and the council or trustees thereof, to which annexation is made, to execute such terms and conditions; *provided*, that such annexation shall not affect or impair any rights or liabilities then existing for or against either of such cities or towns, and that they may be enforced the same as if no such annexation had taken place; and *provided further*, that a city or town separated from another city or town by an intervening city, town, or territory, may be annexed to such city or town in the manner hereinbefore provided, but such annexation shall not be consummated and completed until such intervening city, town, or territory is also annexed. Any proceedings which may have been commenced under said sections as amended under the provisions of this act and prior to the taking effect of this act for the annexation of a city or town, are hereby declared valid and legal, and such proceedings may be completed in accordance with said sections and the provisions of this act.

[The original section repealed, and the foregoing substituted, 17th G. A., ch. 3, § 2.]

EXTENSION OF CITY LIMITS.

[Sixteenth General Assembly, Chapter 47.]

SEC. 1. In addition to the methods now provided by law, any additional city or incorporated town in this state may have its limits enlarged ^{mode of extending limits.} in the manner herein prescribed.

When annexation of corporations is complete.

Proviso: annexation shall not affect rights or liabilities.

Proviso: reference to intervening city or town.

Council may fix limits.

SEC. 2. The council may fix the boundaries of the city or incorporated town as enlarged to the proposed extent, which boundaries shall, as far as practicable, be terminated by straight lines drawn parallel respectively to the corresponding lines of the government survey.

Extension to be submitted to vote.

SEC. 3. The question of making such extension must then be submitted to the vote of all the qualified electors inhabiting the whole city or town as thus proposed to be enlarged.

After proclamation: to be published.

A day must be fixed for such election by resolution of the council of the city or town whose limits are proposed to be enlarged, and notice thereof must be given by proclamation of the mayor of said city or town of the time of holding such election, and setting forth the exact question to be presented to the electors for determination; which proclamation shall be published for four weeks consecutively prior to said election in some newspaper published in said city or town, which notice shall be deemed sufficient notice of said election and its purposes to all the inhabitants of the city or town as proposed to be enlarged; and if at such election the number of legal votes cast for such extension shall exceed those cast against it, the mayor shall issue his proclamation announcing that fact, and from thenceforth the limits of said city or town shall be enlarged as proposed.

Certain lands within such limits not to be taxable except for road tax.

SEC. 4. No lands included within said extended limits which shall not have been laid off into lots of ten acres or less, or which shall not subsequently be divided into parcels of ten acres or less, by the extension of streets or alleys, and which shall also in good faith be occupied and used for agricultural or horticultural purposes, shall be taxable for any city or town purpose except that they may be subjected to a road tax to the same extent as though they were outside of the city or town limits, which said tax shall be paid into the city treasury; *provided*, that the provisions of this act shall not apply to cities organized under special charter.

[As amended by 17th G. A., ch. 169, so as to make the provisions applicable to incorporated towns, and reducing the size of the tracts exempted from taxation.]

SPECIAL CHARTERS.

[As to acts applicable only to cities under special charters, see note to § 551.]

Corporations may abandon and adopt this chapter.
Ex. S. 9 G. A. ch. 25, § 1.
11 G. A. ch. 69.

SEC. 434. Any city or town incorporated by special charter, or in any other manner than that provided by this chapter, may abandon its charter and organize itself under the provisions of this chapter with the same territorial limits, by pursuing the course hereinafter prescribed.

The mere act of a town, existing under special charter, in electing officers provided by the general incorporation act, at the time and in the manner there contemplated, does not amount to a surrender of its charter, and an organization under the provisions of the general act; and where the officers, &c., are not the same, the officers so elected will not even be officers *de facto*: *Town of Decorah v. Bullis*, 25-12.

Petition to be presented:
election ordered.
Ex. S. 9 G. A. ch. 25, §§ 2, 3.

SEC. 435. Upon the petition of fifty legal voters in any such city or town to the council or trustees thereof, praying that the question of abandoning its charter be submitted to the legal voters, the council or trustees shall immediately direct a special elec-

tion to be held, at which such question shall be decided, specifying at the same time, the time and place of holding the same, and appointing the judges and clerks of the election.

SEC. 436. The mayor, or in case there is no mayor, the president of the council or board of trustees, shall at once issue a proclamation giving notice of such election, of the question submitted to the electors, and of the time and place of holding the election; which proclamation shall be published for four consecutive weeks in some newspaper published in such city or town; and if there is none published therein, then such proclamation shall be published by posting a copy thereof in five public places within the corporate limits of such city or town, one of which shall be on the door of the mayor's office.

Proclamation:
notice of elec-
tion given.
Same, § 4.

SEC. 437. At such election, those who desire to vote in favor of the abandonment of the charter shall deposit a ballot with the words "in favor of abandonment;" those desiring to vote against the abandonment shall deposit a ballot with the words "against abandonment." The election shall be conducted in other respects as elections for city officers are conducted under the charter. The abstract of votes shall be returned to the city council or board of trustees, who shall canvass the same and declare the result, which shall be entered on the journal.

Manner of vot-
ing result de-
clared.
Same, § 5.

SEC. 438. If a majority of the votes cast at such election be in favor of the abandonment of the charter, the council or trustees shall immediately call a special election for the election of officers for such corporation according to its class as defined by this chapter; and from and after the election and qualification of such officers, the former charter of such city or town shall be considered as abandoned, and such city or town shall be considered as organized, and shall have all the rights and be subject to all the liabilities of the class to which it belongs, but the officers so elected shall hold their offices only until the next annual municipal election in such city or town. If a majority of the votes be against abandonment, that question cannot be again submitted until after the expiration of one year from the time of such election.

Special charter
abandoned:
officers to be
elected: re-
submission.
Same, § 6.

SEC. 439. All rights and property of every description which were vested in any municipal corporation under its former organization, shall be deemed and held to be vested in the same municipal corporation under the organization herein contemplated; and no right or liability, either in favor of or against such corporation existing at the time, and no suit or prosecution of any kind, shall be affected by such change; *provided*, that when a different remedy is given by this chapter which can properly be made applicable to any right existing at the time such change is made, the same shall be deemed cumulative to the remedies before provided, and may be used accordingly.

Vested rights
not affected.
Same, § 7.

SEVERANCE OF TERRITORY.

SEC. 440. When the inhabitants of a part of any town or city shall desire to have the part of the territory of such city or town in which they reside severed from, or stricken out of the limits of such city or town, they may apply by petition in writing, signed by a majority of the resident property holders of that part of the

Application:
how made.
R. § 1048.

territory of such city or town, to the circuit court of the county, which petition shall describe the territory proposed to be thus severed or stricken out of the limits of such city or town, and have attached thereto an accurate map or plat thereof, and shall also name the person or persons authorized to act in behalf of the petitioners in the prosecution of said petition.

It was held that 7th G. A., ch. 157, §§ 19-27, (Rev. §§ 1048-1056) were applicable alike to cities and towns organized under that act, and those previously organized under special charter: *Whiting v. City of Mt. Pleasant*, 11-482. (Case doubted in *Burke v. Jeffries*, 20-145.)

The provisions of this section apply to any territory within a city or

town, whether such territory is or is not laid out into lots and blocks. If so laid out, it seems that the severance would operate as an extinguishment of the rights of the corporation in the streets and alleys of such portion: *McKean v. City of Mt. Vernon*, 51-306; *Way v. Town of Centre Point*, 51-708.

Notice to be given.
R. § 1049.

SEC. 441. Notice of the filing of the same shall be given by publication in a newspaper published in said city or town, or by posting a notice of the same in five public places in said city or town four weeks previous to the succeeding term of said court, which notice shall contain the substance of said petition and state the term of court at which the hearing thereof will be had.

Petition heard:
affidavits annexed.
R. § 1050.

SEC. 442. The hearing of such petition may be had by the court, or either party may demand a jury, and the proper authorities of such city or town, or any person interested in the subject matter of said petition, may appear and contest the granting of the same; and affidavits in support of or against said petition may be prepared and submitted, and may be examined by the court or jury, and the court may, in its discretion, permit the agent or agents named in the petition to amend or change the same, except that no amendment shall be permitted whereby the territory embraced in said petition shall be increased or diminished without continuing the case to the next term, and requiring new notice to be given as above provided.

Trial by jury:
terms of separation adjusted.
R. § 1051.

SEC. 443. If the court or jury, after hearing the petition and evidence, shall be satisfied that said petition has been signed by a majority of the property-holders residing within the limits of the part of the city or town described in the petition and plat, and that the limits have been accurately described, and a correct map or plat thereof made and filed, and if the court or jury shall be further satisfied that the prayer of the petitioners should be granted, the court shall appoint three disinterested persons commissioners to adjust the terms upon which such part shall be so stricken out as to any liabilities of such city or town that have accrued during the connection of such part with such corporation.

A decision granting the severance of certain territory, as prayed in a proceeding, such as is here contemplated, overruled on appeal, for the reason that, under the circumstances, justice and equity did not require it: *Mosier v. City of Des Moines*, 31-174.

Commissioners to take an oath: hear parties: report may be set aside.
R. § 1052.

SEC. 444. The commissioners so appointed shall take and subscribe an oath that they will impartially perform their duties as such, and shall, at a time by them fixed, hear the agent named in the said petition and also the proper authorities of the city or town in regard to the subject matter to them submitted, and report to

the next succeeding term of said court their doings and judgment in the premises, and upon the filing of said report the court shall decree in accordance therewith and with the prayer of said petition; *provided*, that for good and sufficient cause, and upon a proper showing, the court may reject or set aside said report, and appoint new commissioners, and continue the cause for further action to be had thereon.

SEC. 445. The clerk shall forthwith file a certified transcript of such decree, together with the petition and map, in the office of the recorder of the county and in the office of the secretary of state.

SEC. 446. When such certified transcripts are filed, the severance shall be deemed complete. The costs shall be paid by the petitioners, but each party shall pay their own witness fees.

DISCONTINUANCE.

SEC. 447. Whenever one-fourth of the legal voters of any city or incorporated town in this state shall petition the circuit court of the county wherein such corporation is situated for the discontinuance of the same, the said court shall cause to be published for at least thirty days, a notice stating that the question of discontinuing such corporation will be submitted to the legal voters of the same at the next annual corporation election.

SEC. 448. The form of ballot shall be, "For the incorporation," and "Against the incorporation."

SEC. 449. If a two-thirds majority of all the legal votes cast for and against such proposition shall be cast "against the incorporation," then the same may be discontinued. The vote provided for in this and the two preceding sections shall not be construed to discontinue any corporation until the said corporation shall have made ample provisions for the payment of all its indebtedness, and for the faithful performance of all its contracts and obligations, and shall have levied the requisite tax therefor.

SEC. 450. The vote for this purpose shall be taken, canvassed, and returned in the same manner as other municipal elections, and all expenses of the same paid by the corporation so voting. No more than one such election shall be held in the same year.

SEC. 451. The books, documents, records, papers, and corporate seal of any city or town so discontinued shall be deposited with the county auditor of the county for safe keeping and reference in future; and all court records of any mayor or other officer shall be deposited with the nearest justice of the township, who shall have authority to execute and complete all unfinished business standing on the same.

SEC. 452. Whenever the incorporation of any city or town shall have been discontinued under the provisions of the four preceding sections, the auditor of the county wherein such corporation was situated shall publish such fact for thirty days in a county paper, if one is published in the county; if not, shall post three notices for the same length of time, and also certify the fact to the secretary of state.

SEC. 453. For the payment of its indebtedness, the corporation shall issue warrants in cases where there is no money in the treasury, and the county treasurer shall collect the tax which shall

Warrants to issue: tax collected: surplus Same, § 7.

be levied to pay such indebtedness as hereinbefore contemplated and prescribed as he collects other taxes, and pay the said warrants; and any surplus of this fund shall be passed over to the temporary school fund of the district where the same was levied.

POWERS.

Enumerated.
R. § 1047.
C. § 51, § 664.

SEC. 454. Cities and towns organized as provided in this chapter shall be bodies politic and corporate under such name and style as they may select at the time of their organization, and may sue or be sued; contract or be contracted with; acquire and hold property, real and personal; have a common seal which they may change and alter at pleasure, and have such other privileges as are incident to municipal corporations of like character or degree not inconsistent with the laws of the state.

Name.
R. § 1058.

SEC. 455. All municipal corporations organized under this chapter shall have the general powers and privileges, and be subject to the rules and restrictions granted and prescribed in the succeeding section.

Prevent nuisances, riots, running houses; establish markets.
R. § 1057.

SEC. 456. They shall have power to prevent injury or annoyance from anything dangerous, offensive, or unhealthy, and to cause any nuisance to be abated; to regulate the transportation and keeping of gunpowder or other combustibles, and to provide or license magazines for the same; to prevent and punish fast or immoderate riding or driving of horses through the streets; to regulate the speed of trains and locomotives on railways running over the streets or through the limits of the city or incorporated town by ordinance, and enforce the same by a fine not exceeding one hundred dollars; to establish and regulate markets; to provide for the measuring or weighing of hay, coal, or any other article of sale; to prevent any riots, noise, disturbance, or disorderly assemblages; to suppress and restrain disorderly houses, houses of ill fame, billiard tables, nine or ten pin alleys, or tables and ball alleys, and to authorize the destruction of all instruments or devices used for purposes of gaming, and to protect the property of the corporation and its inhabitants and to preserve peace and order therein.

The city is not liable for neglect or non-feasance of its officers or agents in exercising the powers her conferred: *Ogg v. City of Lansing*, 35-4-5.

Under an authority given to suppress and restrain billiard tables, municipal authorities may impose a license thereon: *City of Burlington v. Lawrence*, 42-681.

The power to establish markets carries with it the power to prohibit the sale of meat, &c., at other places, and

such regulation is not in restraint of trade: *City of Davenport v. Kelley*, 7-102; and, held, that the city may authorize an individual to erect market buildings upon private property, and lease stalls therein, and treat such building as a public market, prohibiting sales at other places, (overruling on this point, *City of Davenport v. Kelley, supra*): *Le Clare v. City of Davenport*, 13-210.

Regulations against fires.
R. § 1058.
12 G. A. ch. 106.

SEC. 457. They shall have power to make regulations against danger from accidents by fire, to establish fire districts, and, on petition of the owners of two-thirds of the grounds included in any square or block, to prohibit the erection thereon of any building or any addition to any building, unless the outer walls thereof be made of brick and mortar or of iron and stone and mortar, and

to provide for the removal of any building or additions erected contrary to such prohibition.

An ordinance of the city passed under the authority of this section, authorizing the destruction of private buildings to prevent the spread of

fire, does not make a corporation liable for property so destroyed: *Field v. City of Des Moines*, 39-575

SEC. 458. They shall have power to regulate the burial of the dead; to provide without the limits of the corporation places for the interment of the dead, to prevent any sub-interments within such limits and to cause any body interred contrary to such prohibition to be taken up and buried without the limits of the corporation.

SEC. 459. They shall have power to restrain and regulate the running at large of cattle, horses, swine, sheep, and other animals within the limits of the corporation, and to authorize the distraining, impounding, and sale of the same for the penalty incurred and costs of the proceeding, to prevent the running at large of dogs and injuries therefrom, and to authorize the destruction of the same when at large contrary to any prohibition to that effect.

Animals which are not permitted to run at large within a city, upon coming within its limits from without, may be taken up and dealt with in accordance with the ordinances of the

Burial of the dead.
R. § 1060.

Animals running at large.
R. § 1061.

SEC. 460. They shall have power to regulate or prohibit all theatrical exhibitions of whatever name or nature, for which money or any other reward is in any manner demanded or received; but lectures on scientific, historical, or literary subjects shall not come within the provisions of this section.

SEC. 461. The establishment and maintenance of a free public library is hereby declared to be a proper and legitimate object of municipal expenditure; and the council or trustees of any city or incorporated town may appropriate money for the formation and maintenance of such a library, open to the free use of all its inhabitants under proper regulations, and for the purchase of land and erection of buildings, or for the hiring of buildings or rooms suitable for that purpose, and for the compensation of the necessary employes; provided, that the amount appropriated in any one year for the maintenance of such a library shall not exceed one mill upon the dollar upon the assessed valuation of such city or town. Any such city or incorporated town may receive, hold, or dispose of any and all gifts, donations, devises, and bequests that may be made to such city or incorporated town for the purpose of establishing, increasing, or improving any such public library; and the city or town council thereof may apply the use, profits, proceeds, interests, and rents accruing therefrom, in such manner as will best promote the prosperity and utility of such library. Every city or incorporated town, in which such a public library shall be maintained, shall be entitled to receive a copy of the laws, journals, and all other works published by authority of the state after the establishment of such library, for the use of such library, and the secretary of state is hereby authorized and required to furnish the same from year to year to such city or incorporated

Theatrical exhibitions.
R. § 1062.

Public library established: no money to be appropriated except on vote of people.
13 G. A. ch. 45.
14 G. A. ch. 17.

town. But no appropriation of money can be made under this section, unless the proposition is submitted to a vote of the people; and at the municipal election of such city or town, the question, "Shall the city (or town council, as the case may be,) accept the benefit of the provisions of this section."

SEC. 462. They shall have power to regulate and license sales by auctioneers and transient merchants within their corporate limits, provided, that the exercise of the power shall not interfere with sales made by sheriffs, constables, coroners, marshals, executors, guardians, assignees of insolvent debtors or bankrupts, or any other person required by law to sell real or personal property.

This section gives general power to regulate and license sales by auctioneers, etc.: *Town of Decorah v. Dunstan*, 38-96.

A resident merchant engaged in selling goods at retail who employs

an auctioneer to sell part of his goods is not an auctioneer in such sense that he can be compelled to pay a license under this section: *City of Oskaloosa v. Tulliss*, 25-440.

Sales of animals: taxation of carts, taverns, circuses, &c.:

Sales of intoxicating liquors R. § 1063.
12 G. A. ch. 154, § 1.

SEC. 463. They shall have power to regulate license or prohibit the sale of horses or other domestic animals at auction in the streets, alleys or public places; to regulate, license and tax all carts, wagons, drays, coaches, hacks, omnibuses, and every description of conveyance kept for hire; to regulate, license and tax taverns, restaurants, eating houses; to regulate, license and tax or prohibit beer and wine saloons; to regulate, license and tax or prohibit billiard saloons, pool tables, and all other tables kept for hire, ten-pin or other ball alleys, shooting galleries or places; to regulate and license pawn-brokers and peddlers; to regulate, license or prohibit circuses, menageries, theatres, shows, and exhibitions of all kinds, except such as may be exempted by the general laws of the state; and to regulate or prohibit the sale of intoxicating liquors not prohibited by the laws of the state.

[The original section repealed and the foregoing substituted, 16th G. A., ch. 24. Municipal corporations given power to regulate or prohibit sale of liquors within two miles of corporate limits; see 17th G. A., ch. 119, inserted following § 1559.]

Neither the power to tax, nor the power to regulate, gives the right to license. So held in case of taverns, etc., under this section: *City of Burlington v. Bumgardner*, 42-673.

But under the power to prohibit the sale of wine, beer, etc., the city may impose a license: *City of Keokuk v. Dressell*, 47-597.

A municipal corporation can exercise no power of taxation such as here contemplated unless it be expressly conferred by the legislature or absolutely necessary to carry out some

other power expressly conferred, and in case of doubt, the power will be denied: *The State v. Smith*, 31-493.

A city may prohibit sale of liquors which are not prohibited by state law: *City of Burlington v. Kellar*, 18-59; and the provisions of 13 G. A., ch. 154, § 2, conferring the power to regulate or prohibit the sale of such liquors, held, to be neither a special nor a local law, nor an improper delegation of legislative authority: *The State v. King*, 37-462.

Streets, alleys, public grounds, and railways. R. § 1064.

SEC. 464. They shall have power to lay off, open, widen, straighten, narrow, vacate, extend, establish and light streets, alleys, public grounds, wharves, landing, and market places, and to provide for the condemnation of such real estate as may be necessary for such purposes. They shall also have the power to authorize or forbid the location and laying down of tracks for railways and street rail-

ways on all streets, alleys, and public places; but no railway track can thus be located and laid down until after the injury to property abutting upon the street, alley, or public places upon which such railway track is proposed to be located and laid down has been ascertained and compensated in the manner provided for taking private property for works of internal improvement in chapter 4 of title 10 of the code of 1873.

[As amended by 15th G. A., ch. 6, changing the method in which compensation is to be made. The word "open" in the first line of the section as found in the original and here given is omitted in the printed code. This section made applicable to cities under special charter, see 18th G. A., ch. 96, not inserted; see note to § 551. As to right of way given to street railways over highways outside of city limits, see 18th G. A., ch. 32, inserted following § 1272.]

VACATION OF STREETS: Where the power to vacate streets is wisely and discreetly used, its exercise will not be restrained at the suit of a private individual claiming to be injured thereby: *Gray v. Iowea Land Co.*, 26-387; nor is the vacation of a street such as taking of private property etc., as to entitle a property owner to compensation for any loss resulting therefrom: *Barr v. City of Oskaloosa*, 45-275.

RIGHT TO LOCATE RAILWAYS UPON STREETS: Since the change made in § 1262 by 15 G. A., ch. 47, the power to authorize the laying down of tracks for street and other railways, and the use of steam motors thereon, does not exist except as here given, and therefore is not granted to a city organized under a special charter containing no such authority. Previous cases discussed: *Stanley v. City of Davenport*, 54-463.

But see *Cain v. C. R. I. & P. R. Co.*, 54-255 (filed after the preceding case) in which the cases referred to below are cited with approval.

[The following cases were decided under the law existing previously to the change in § 1262, above referred to:]

By the right of way act, the legislature has conferred upon railroad companies the right to construct their tracks over and along the streets of towns and cities, consent of the council being first obtained, and railroads so constructed cannot be considered as a public nuisance: *Milburn v. City of Cedar Rapids*, 12-246; and such right may be exercised, even without the consent of the council, and without compensation being made to the city: *The City of Clinton v. C. R. I. & M. R. R. Co.*, 24-455; *C. N. & S. W. R. Co. v. Mayor, etc.*, 36-299; *Ingram v. C. D. & M. R. R. Co.*, 38-

669; *City of Council Bluffs v. K. C. St. J. & C. B. R. Co.*, 45-338, and other cases cited and commented upon in *Davis v. C. & N. W. R. Co.*, 46-389, and *The State v. D. & St. P. R. Co.*, 47-507. But if the fee in the streets is in the adjoining property owner, he is entitled to compensation for the additional servitude: *Kuchem v. C. C. & D. R. Co.*, 46-366.

An incorporated street and horse railway has the same rights as a railway operated by steam, and it does not become a nuisance by the repeal of the ordinance authorizing its construction: *City of Clinton v. C. & L. Horse R'y Co.*, 37-61.

LIABILITY FOR NEGLIGENCE IN CONSTRUCTION OF RAILWAY TRACK OVER STREETS, &c.: A railway company which so negligently builds its track over the street of a city, or so occupies such street as to create a nuisance, is liable to any one suffering therefrom special damage not common to the whole public: *Park v. C. & S. W. R. Co.*, 43-636; *Frith v. City of Dubuque*, 45-406; *Cain v. C. R. I. & P. R. Co.*, Dec. T., 1879. And this is true, although the party injured do not own the fee in the street: *Cadle v. Muscatine Western R. Co.*, 44-11.

The right to construct a railway track, over the street of a city, is subject to equitable control and proper police regulation, and where an ordinance provided that the track should not be laid within eight feet of the sidewalk, held, that an abutting property-owner injured by the violation of that provision might recover damages therefor: *Cain v. C. R. I. & P. R. Co.*, 54-255.

The city is not liable for damages resulting from the laying down of tracks, &c., under permission granted by it: *Frith v. City of Dubuque*, 45-406.

Grading of
streets: con-
struction of
sewers.
13 G. A. ch. 65.
14 G. A. ch. 45,
§ 1.

SEC. 465. They shall have power to provide for the grading and repairs of any street, avenue, or alley, and the construction of sewers, and shall defray the expenses of the same out of the general funds of such city or town, but no street shall be graded except the same be ordered to be done by the affirmative vote of two-thirds of the city council or trustees.

[Expense of grading alleys not to be paid out of the general fund. See § 5 of the act next following.]

Being clothed with the power to establish and keep in repair its streets, the exercise of such power is not discretionary and a city is liable to an action for damages resulting from an injury caused by a failure in that respect, as for instance by reason of an obstruction from snow and ice: *Collins v. City of Council Bluffs*, 32-324: or by reason of an obstruction upon the sidewalk placed there by the adjoining owner: *Rowell v. Williams*, 29-210.

Where the city makes improvements and property owners build, etc., with reference thereto, the city is liable for neglect to keep such improvements in repair, although they would not be liable originally for not making the improvements. So held, in case of damages from the obstruction of a sewer: *Powers v. City of Council*

Bluffs, 50-197.

The city is not liable for damage resulting from the grading of its streets, if done in a careful and skillful manner: *Ellis v. Iowa City*, 29-229; but the city is liable in such cases if the grading is done in an unskillful manner, as where the natural drainage is destroyed and no means is provided for the escape of surface water: *Cotes v. City of Davenport*, 9-227; *Templin v. Iowa City*, 14-59; *Ellis v. Iowa City*, 29-229; *Ross v. City of Clinton*, 46-606.

As to what improvements come within the meaning of repairs, see *Koonts v. Lucas*, note to following section.

As to compensation for damages resulting from change of grade, see § 469, and notes.

[Fifteenth General Assembly, Chapter 51.]

City and town
councils may
provide for
grading alleys.

Assessment of
expenses.

Proviso : peti-
tion.

Work to be
by contract.

Assessments a
lien.

SEC. 1. The city council or trustees of any incorporated city or town, organized under special charter or under the provisions of the general incorporation laws of the state, are hereby authorized and empowered to provide by ordinance for the improvement of alleys (in said city or town) by grading the same, and for the assessment of the expenses thereof, upon the owners of lots or parcel of land abutting on said alley, pro rata, according to the front feet of said lots or parcel of land: *provided*, that such ordinance shall not be adopted except after the presentation to said council of a written petition for the improvement of such alley, signed by a number of the owners of property so to be assessed therefor equal to a majority of the owners of such property.

[This section modified by 16th G. A., ch. 116, § 12, inserted next following this act.]

SEC. 2. It shall be the duty of such city council or trustees to require the work of grading such alley to be done under contract therefor, to be entered into with the lowest responsible bidder; *provided*, that all bids for such work may be rejected by such council or trustees, if by them deemed to be exorbitant, and new bids ordered.

SEC. 3. All assessments for the grading of alleys under this act shall be a lien upon the lots and lands assessed, and shall bear the same rate of interest, and the said property assessed may be sold for payment thereof in the same manner, at a regular or ad-

journed sale, with the same forfeiture, penalties, and rights of re-sale, demption, and certificates and deeds on such sales shall be made in the same manner and with like effect, as in cases of sales for nonpayment of the annual taxes of such cities or towns respectively, as now or hereafter provided by law in respect thereto.

SEC. 4. Such city council or trustees may provide by ordinance for the particular mode of making and returning the assessment hereinbefore authorized, and payment of such assessments may, if so directed by said council or trustees, be enforced in the manner and by the proceedings provided for by sections four hundred and seventy eight, four hundred and seventy-nine, and four hundred and eighty-one of the code.

SEC. 5. That so much of section four hundred and sixty-five, chapter 10, title IV, as requires the expense of the grading of alleys to be paid out of the general funds of any incorporated city or town, be and the same are hereby repealed.

[Sixteenth General Assembly, Chapter 116.]

SEC. 12. That so much of section 1, chapter 51, acts of the fifteenth general assembly as requires cities to provide by ordinance for the improvement of alleys after presentation of petition by owners of property to be assessed, be and the same is hereby repealed, and such cities organized under special charters may provide by ordinance how such improvements shall be made, and thereafter may order any alley to be improved, graded or macadamized, by resolution passed by the affirmative vote of two-thirds of such council, and on voting on such resolution the yeas and nays shall be recorded.

[The other sections of this chapter refer alone to cities under special charter, and are omitted. See note to § 551. Whether it is intended by this section to modify the section to which it refers, generally, or only in reference to cities under special charter, is left for the judgment of those interested.]

SEC. 466. They shall have power to construct side-walks, to curb, pave, gravel, macadamize, and gutter any highway or alley therein, and to levy a special tax on the lots and parcels of land fronting on such highway or alley to pay the expense of such improvement. But unless a majority of the resident owners of the property subject to assessment for such improvement petition the council or trustees to make the same, such improvements shall not be made until three-fourths of all the members of such council or trustees shall, by vote, assent to the making of the same.

AS TO WHAT IMPROVEMENTS MAY BE MADE UNDER THIS SECTION:
"Macadamizing" includes "trimming" and "guttering;" *McNamara v. Estes*, 22-246.

"To pave" may include all things necessary to make a level and convenient surface for horses, carriages and foot passengers, of any convenient or practical material: *Buell v. Ball*, 20-282, 290.

The authority to "pave" given in a special charter, held to include the power to macadamize and gutter: *Warren v. Henley*, 31-31.

Where an improvement consisted in an entire raising and changing of the surface of the street, held, that it was an improvement for which a special tax might be levied under this section, and not "repairing" as contemplated by the preceding section, to be paid for out of the general funds: *Hoops v. Lucas*, 12-117.

The city may grade and macadamize less than the whole width of the street where it is not shown to be to the injury or oppression of owners of property adjacent thereto: *Morrison*

Mode of assessment

Council may improve alleys without petition from property owners.

Sidewalks: highways: special tax: assessment of property owners.

13 G. A. ch. 63.
14 G. A. ch. 45.

v. Hershire, 32-271, 276.

WHO RESPONSIBLE FOR: An owner of a corner lot may be required to pay for the cost of macadamizing one-fourth of the square occupied by the intersection of the streets abutting his property: *Wolfe v. City of Keokuk*, 48-129.

A special tax for the improvement of a street cannot be taxed to a street railway company occupying a portion of such street: *Koops v. Lucas*, 52-117.

PROCEEDINGS: Improvements may be ordered either when the proper petition is presented, or by three-fourths vote, without such petition: *Tallant v. City of Burlington*, 39-543.

In ordering an improvement in the absence of a petition therefor, the council may act upon information furnished by the report of a committee as well as upon their own knowledge in determining the necessity of the improvement: *Brewster v. City of Darienport*, 51-427.

Under the provisions of a special charter somewhat similar to this section, held, that a party, who with others signed and presented to the council a petition praying that certain improvements should be made, could not object to the proceedings

thereunder on the ground that a sufficient number of property-owners had not signed such petition. The proceedings would be binding as to him, although they might not be as to others who had not signed: *City of Burlington v. Gilbert*, 31-356.

LEVYING AND COLLECTING THE TAX: Making the cost of such improvements a charge upon abutting property is an exercise of the power of taxation and not of the right of eminent domain, and such a provision is not unconstitutional as being unequal, applying to particular individuals or classes, and not uniform: *Warren v. Henley*, 31-31.

The city council may provide the mode under which the taxes contemplated in this and the following section shall be assessed, and authorize the city auditor to make such assessment: *City of Burlington v. Quick*, 47-222.

Where the special charter of a city authorized a special tax to be levied and collected off adjacent lots for building sidewalks, etc., held, that the city was not thereby given power to sell and convey such lots for said tax, but that it might be enforced against them by judicial proceedings: *Merriam v. Moody*, 25-163.

SEC. 467. They shall have power to repair permanent sidewalks, and to assess the expense thereof on the property in front of which such repairs are made.

As to mode of assessment, see *City of Burlington v. Quick*, cited under preceding section. As to liability of the city for obstructions upon the sidewalk: see *Rouell v. Williams*, in note to §465.

SEC. 468. They shall have power to provide for the laying of temporary plank side-walks upon the natural surface of the ground, without regard to grade, on streets not permanently improved, at a cost not exceeding forty cents a lineal foot, and to provide for the assessment of the cost thereof on the property in front of which the same shall be laid.

Temporary
sidewalks; ex-
pense limited.
13 G. A. ch. 65.
14 G. A. ch. 45,
§ 4.

When grade of
streets is
changed after
buildings are
erected: dam-
ages to be
assessed and
paid.
14 G. A. ch. 40.

SEC. 469. When any city or town shall have established the grade of any street or alley, and any person shall have built or made any improvements on such street or alley according to the established grade thereof, and such city or town shall alter said established grade in such a manner as to injure or diminish the value of said property, said city or town shall pay to the owner or owners of said property so injured the amount of such damage or injury, which shall be assessed by three persons—one of whom shall be appointed by the mayor of such city or town, one by the owner of the property, and one by the two so appointed, or in case of their disagreement, by mayor and owner, or in case of their disagreement, by the city council or town trustees. If the owner of such property shall fail to appoint one such appraiser in

ten days from the time of receiving notice so to do, then the city council or town trustees shall appoint all such appraisers, and no such alteration of grade shall be made until said damages so assessed shall have been paid or tendered to the owner of the property so injured or damaged. The appraisers shall be sworn to faithfully execute their duties according to the best of their ability. Before entering upon their duties, they shall give notice by publication for three weeks in one or more newspapers printed in such city, of the time and place of their meeting for the purpose of viewing the premises and making their assessment. They shall view the premises, and, in their discretion, receive any legal evidence and may adjourn from day to day. When the appraisal shall be completed, the appraisers shall sign and return the same to the city council or town trustees within thirty days of their appointment. The city council or town trustees shall have power, in their discretion, to confirm or annul the appraisal, and if annulled, all the proceedings shall be void, but if confirmed, an order of the confirmation shall be entered. Any person interested may appeal from the order of confirmation to the circuit court of the county in which such city or town is situated, by notice in writing to the mayor at any time before the expiration of twenty days after the entering the order of confirmation. Upon the trial of the appeal, all questions involved in the proceedings, including the amount of damages, shall be open to investigation, and the burden of proof shall, in all cases, be upon the city or town to show that the proceedings are in conformity with this section. The cost of any proceedings incurred prior to the order of such city council or trustees confirming or annulling the appraisal, shall in all cases be paid by such city or town.

Aside from statutory provisions the city is not liable for *necessary* damages done to property in consequence of establishing or changing the grade of streets, etc.: *Creal v. City of Keokuk*, 4 Gr. 47; and a party claiming the benefit of the remedy provided by statute must pursue the method pointed out: *Cole v. City of Muscatine*, 14-296; *Cotes v. City of Davenport*, 9-227; *Russell v. City of Burlington*, 30-262; *City of Burlington v. Gilbert*, 31-356.

The right to compensation only arises when *improvements* have been made subsequently to the establishment of the grade, but the damages for which compensation is to be made are those accruing to the entire real estate, and not alone those accruing to the improvements: *Dalzell v. City of Davenport*, 12-437.

The city is made liable in such cases not only for *injury* to the property, but for *damages* resulting from the value of the property being di-

minished. Such diminution is not to be estimated alone on the improvements erected subsequently to the establishment of the grade, but upon the whole property: *Hempstead v. City of Des Moines*, 52-303.

If the appraisal is annulled by the council, the party injured may bring an action for his damages, no appeal from the order annulling the appraisal being allowed: *Ibid.*

In estimating the damages, opinions of witnesses may be received as to the value before and after the change in grade: *Dalzell v. City of Davenport, supra.*

Where the effect of the change in grade is such as, upon the whole, to increase the value of the property, the owner thereof cannot recover for incidental disadvantage or expense resulting therefrom: *Meyer v. City of Burlington*, 52-560.

As to liability of the city for damage resulting from grading, &c., see notes to § 465.

Land purchased or condemned for public purposes.
10 G. A. ch. 127.
13 G. A. ch. 80.

SEC. 470. They shall have power to purchase or condemn, and pay for out of the general fund, and enter upon and take any lands within or without the territorial limits of such city or town for the use of public squares, streets, parks, commons, cemeteries, hospital grounds, or any other proper or legitimate municipal use, and to enclose, ornament and improve the same. They shall have entire control of the same, and shall have power, in case such lands are deemed unsuitable or insufficient for the purpose for which they were originally granted, to dispose of and convey the same; and conveyances executed in accordance with this chapter shall be held to extinguish all rights and claims of any such town or city to such lands existing prior to such conveyance. But when such lands are so disposed of and conveyed, enough thereof shall be reserved for streets to accommodate adjoining property-owners.

[General provisions as to cemeteries, see acts inserted following § 420.]

The act of 1864 (10 G. A., ch. 127) in so far as it was attempted thereby to confer upon cities and towns the power to sell and convey squares and parks therein, laid off and dedicated by individuals, *held void as authorizing a perversion of a trust. Whether the corporation might not be given power to part with whatever interest it possessed in the property, quere: Warren v. Mayor of Lyons City, 22-351.*

[Eighteenth General Assembly, Chapter 89.]

City may become purchaser at execution sale.

SEC. 1. Any city of the first or second class, organized under the general laws of this state, shall have power to acquire real estate, or an interest therein as a purchaser or at an execution sale where such city is the plaintiff in execution, or otherwise interested in the proceeding, and to dispose of the property, or interest therein, so acquired, and also to dispose of any real estate, or interest therein, including any streets or portion thereof vacated or discontinued, however acquired or held by such city, in such manner and upon such terms as the city council shall deem just and proper.

Water works.
14 G. A. ch. 78,
§ 1.

SEC. 471. They shall have power to erect water works, or to authorize the erection of the same; but no such works shall be erected or authorized until a majority of the voters of the city or town at a general or special election, or four-fifths of the members of the council or board of trustees thereof, by vote, approve the same.

This section applies to cities acting under special charters as well as to others: *Grant v. City of Davenport*, 36-396, 404. *Appeal of the Des Moines Water Co.*, 48-324.

Where a company was authorized to erect water works and charge certain rates for water furnished, with the privilege to the city of buying the works upon certain terms; *held*, that such water works were not public property, and were subject to taxation: *Ibid.*

Same.
14 G. A. ch. 78,
§ 2, 3, 4.

SEC. 472. They shall have power to construct or authorize the construction of such works without their limits, and for the purpose of maintaining and protecting the same from injury, and the water from pollution, their jurisdiction shall extend over the terri-

tory occupied by such works, and all reservoirs, streams, trenches, pipes, and drains, used in, and necessary for the construction, maintenance, and operation of the same, and over the stream or source from which the water is taken for five miles above the point from which it is taken; and to enact all ordinances and regulations necessary to carry the power herein conferred into effect.

SEC. 473. When the right to build and operate such works is granted to private individuals or incorporated companies by said cities and towns, they may make such grant to inure for a term of not more than twenty-five years, and authorize such individual or company to charge and collect from each person supplied by them with water, such water rent as may be agreed upon between said person or corporation so building said works, and said city or town; and such cities or towns are authorized and empowered to enter into a contract with the individual or company constructing said works, to supply said city or town with water for fire purposes, and for such other purposes as may be necessary for the health and safety thereof, and to pay therefor such sum or sums as may be agreed upon between said contracting parties.

A city so indebted that a contract by it for the erection of water works would be void, may still contract to pay out of its ordinary revenues a sum as rent for the supplying of water to the city and its inhabitants, as part of its ordinary expenses: *Grant v. City of Davenport*, 36-396.

An ordinance granting to a private

company the right to build and operate such works, and providing that the city may, upon certain terms, purchase them, is not an incurring of an indebtedness within the meaning of Art. 11, § 3 of the constitution: *Burlington Water Co. v. Woodward*, 49-58.

SEC. 474. Said cities or towns are hereby authorized to condemn and appropriate so much private property as shall be necessary for the construction and operation of said water works; and when they shall authorize the construction and operation thereof by individuals or corporations, they may confer, by ordinance, upon such person or corporation the said power to take and appropriate private property for said purpose.

SEC. 475. All cities and incorporated towns constructing such works are authorized to assess, from time to time, in such manner as they shall deem equitable, upon each tenement or other place supplied with water, such water rents as may be agreed upon; and at the regular time of levying taxes in each year, said city or town is hereby empowered to levy and cause to be collected, in addition to the taxes now authorized to be levied, a special tax on taxable property in said city or town, which tax, with the water rents hereby authorized, shall be sufficient to pay the expenses of running and operating such works, and if the right to build, maintain, and operate such works is granted to private individuals or incorporated companies by such cities or towns, and said cities or towns shall contract with said individuals or companies for a supply of water for any purpose, such city or town shall levy each year, and cause to be collected, a special tax as provided for above sufficient to pay off such water rents so agreed to be paid to said individual or company constructing said works; provided, however, that said tax shall not exceed the sum of five mills on the dollar for any one year, nor shall the

May condemn
private prop-
erty.
Same, 26.

Assess water
rents as a
special tax:
collection of:
amount.
Same, 28.

same be levied upon the taxable property of said city or town which lies wholly without the limits of the benefit or protection of such works, which limit shall be fixed by the city council or board of trustees each year before making said levy.

The proviso exempting from water tax the property outside of the benefit of water-works, is not unconstitutional: *Grant v. City of Davenport*, 36-396, 405.

SEC. 476. When it shall be deemed necessary by any such corporation to enter upon or take private property for any of the above uses, an application in writing shall be made to the circuit court, which application shall describe, as correctly as may be, the property to be taken, the object proposed, and the owners of the property, and of each lot or parcel thereof known, and notice of the filing thereof shall be given as is required to commence a civil action in said court. After such notice shall have been given, the court shall proceed to determine the compensation to be paid for the taking of the property, and for that purpose shall empanel a jury, and the mode of procedure therein shall be the same, so far as applicable, as in an action by ordinary proceedings. The assessment shall be made so that the amount payable to each owner may be ascertained either by allotting it to each owner by name or on each lot or parcel of land, and the inquiry and assessment shall in other respects be made by the jurors under such instructions as shall be given by the court. The jurors shall be sworn to make the whole inquiry and assessment, but may be allowed to return a verdict as to part and be discharged as to the rest, in the discretion of the court, and in case they shall be discharged from rendering a verdict in whole or in part, another jury may be empaneled at the earliest convenient time, which shall make the whole inquiry and assessment, or the part not made, as the case may be.

The purposes here enumerated are domain except as expressly granted: the only ones for which the city has power to take private property. It does not have the power of eminent

Payment or deposit of damages: possession when taken: costs. K. & 1066.

SEC. 477. When the amount of compensation due to any of the owners of the property to be taken shall be ascertained, the court shall make such order as to its payment or deposit as may be deemed just and proper, and may require adverse claimants to any part of the money or property to interplead, so as to fully settle their rights and interests, and may direct the time and manner in which possession of the property shall be taken or delivered, and may, if necessary, enforce an order giving possession. But none of the property shall be actually taken or occupied until the compensation thus ascertained shall have been paid, or secured to be paid. The costs occasioned by the inquiry and assessment shall be paid by the corporation, and as to the other costs which may arise, they shall be charged or taxed as the court, in its discretion, may direct; no delay in making an assessment of compensation, or in taking possession, shall be occasioned by any doubt which may arise as to the ownership of the property, or any part thereof, or as to the interest of the respective owners; but in such cases the court shall require the deposit of the money allowed as com-

pensation for the whole of the property, or the part in dispute; and in all cases as soon as the corporation shall have paid the compensation assessed, or secured its payment by a deposit of money under the order of the court, possession of the property may be taken and the public work or improvement progress.

SEC. 478. Each municipal corporation may, by a general ordinance, prescribe the mode in which the charge on the respective owners of lots or lands, and on the lots or lands, shall be assessed and determined for the purposes authorized by this chapter; such charge, when assessed, shall be payable by the owner or owners at the time of the assessment personally, and shall also be a lien upon the respective lots or parcels of land from the time of the assessment. Such charge may be collected and such lien enforced by a proceeding in law or in equity, either in the name of such corporation, or of any person to whom it shall have directed payment to be made. In any such proceedings, where pleadings are required, it shall be sufficient to declare generally for work and labor done, and materials furnished on the particular street, alley or highway. Proceedings may be instituted against all the owners or any of them, to enforce the lien against all the lots or land, or each lot or parcel, or any number of them embraced in any one assessment, but the judgment or decree shall be rendered separately for the amount properly chargeable to each. Any proceedings may be severed, in the discretion of the court, for the purpose of trial, review, or appeal.

This section, in so far as it authorizes the rendering of a personal judgment against the property owner, *held* not unconstitutional: *City of Burlington v. Quick*, 47-222, 226; and it seems that an action by the city can only be brought after it has paid its contractors: *Ibid.*, 229.

Rev. § 1068, *held*, not repealed by

14 G. A., ch. 45: *Risdon v. Shank*, 37-82.

The discretion to be exercised by the court in regard to severing proceedings, as herein provided, will not be reviewed upon appeal, except in case of manifest abuse, resulting in substantial prejudice: *City of Des Moines v. Stephenson*, 19-507.

SEC. 479. In any such proceeding, where the court trying the same shall be satisfied that the work has been done, or materials furnished, which, according to the true intent of the act, would be properly chargeable upon the lot or land through or by which the street, alley or highway improved, repaired, or lighted, may pass, a recovery shall be permitted, or a charge enforced, to the extent of the proper proportion of the value of the work or materials which would be chargeable on such lot or land, notwithstanding any informality, irregularity, or defect in any such municipal corporation or any of its officers. But in such case the court may adjudge as to costs as may be deemed proper, and in cases where an assessment shall have been regularly made, and payment shall have been neglected or refused at the time when the same was required, any municipal corporation may be entitled to demand and recover, in addition to the amount assessed and interest thereon at ten per cent. from the time of the assessment, five per cent. to defray the expenses of collection, which shall be included in any judgment or decree which may be rendered. The provisions and powers conferred in this chapter from section four hundred and sixty-five to section four hundred and seventy-nine, inclusive, shall apply to cities acting under special charters.

Assessment on lots: how enforced.

R. § 1068.

12 G. A. ch. 111.

14 G. A. ch. 45,

§ 6.

Recovery had or charge enforced with penalty.

R. § 1069.

12 G. A. ch. 111.

Preceding fifteen sections to apply to cities acting under special charters.

If an improvement is such as the city is authorized to make, according to the true intent of the law, all errors and irregularities should be discarded and a recovery permitted for the proper proportion of the value of the work from the abutting property-owner: *City of Burlington v. Quick*, 47-222, 228.

Additional powers may be granted

by general statute to cities existing under special charter, as is here done: *Lytle v. May*, 49-224.

This section, in so far as it is to apply to cities acting under special charter, differs from the corresponding one in the Revision, and should not be construed as retroactive: *Starr v. City of Burlington*, 45-87, 90.

Stagnant water: drained: lots filled: lien on property. R. & 1070. 12 G. A. ch. 111.

SEC. 480. Municipal corporations shall have power to cause any lot of land within their limits on which water at any time becomes stagnant, to be filled up or drained in such manner as may be directed by a resolution of the council or trustees; and such owner or his agent, shall, after service of a copy of such resolution, or after a publication of the same in some newspaper of general circulation in such corporation for two consecutive weeks, comply with the directions of such resolution within the time therein specified; and in case of a failure or refusal to do so, it may be done at the expense of said corporation; and the amount of money so expended shall be a debt due to said corporation from the owner of said lot, and shall, moreover, from the time of the adoption of such resolution, be a lien on such lot or lots.

Service by publication is sufficient | is not necessary: *City of Independence v. Purdy*, 46-202.

Delinquent charges and assessments certified to auditor. 12 G. A. ch. 111. 13 G. A. ch. 14.

SEC. 481. Any municipal corporation may, in addition to the means provided by the three preceding sections, if, by ordinance, it so elects, cause any or all delinquent charges, assessments, and taxes made or levied under and by virtue of, and for the purpose specified in said section or referred to therein, to be certified to the county auditor of the county, and be collected and paid over by the treasurer of the county in the same manner as taxes are authorized to be by this chapter.

After an entry of the municipal | they were a part of the county taxes: taxes upon the county tax books, sales | *Morrison v. Hershire*, 32-271. are to be made therefor as though

SEWERAGE.

[Sixteenth General Assembly, Chapter 107.]

Levy of two mills for a sewerage fund.

SEC. 1. Any city within this state may levy a tax of not more than two mills on the dollar in addition to the maximum tax now authorized by law for the purpose of commencing a general system of sewerage in such city, and the money so raised shall constitute a sewerage fund, and shall be applied to no other purpose.

May condemn private property.

SEC. 2. When, for the purpose of carrying off the water of any stream which flows within or through the said city, it becomes expedient to cause a principal sewer to pass through private property, the right to condemn such property for this purpose is hereby conferred upon its council. And the powers granted shall be the same in other respects as those enjoyed by railway companies, by and under the provisions of the code. The proceedings to enforce their powers shall also be the same, except that all damages shall be assessed by a board of three commissioners.

These shall be appointed by the city council and may be changed at the pleasure thereof. They must be free from all personal interest in subjects brought before them for their adjudication, and they may decide on any question of damages that may arise in respect to any of the property that may be claimed to be injured by the construction of said sewer.

SEC. 3. Instead of constructing such principal sewer itself, the city may authorize its construction by any individual or company, and may agree to pay therefor out of the sewerage fund. And the city council may also make all needful rules and regulations in relation to any of the sewers in their respective cities and may regulate the manner in which any property holder may connect therewith, and may also prescribe all needful regulations pertaining thereto.

[Seventeenth General Assembly, Chapter 162.]

SEC. 1. All cities of the first class in the state which have not commenced a general system of sewerage by the levy and expenditure of any tax therefor under the provisions of chapter 107, acts of the sixteenth general assembly, may provide by ordinance for the construction of sewers, or may divide the city into sewerage districts in such manner as the council may determine, and pay the cost of constructing same out of the general revenue of the city, or assess the cost upon the adjacent property, or may levy a certain sewerage tax within the sewerage district, out of which to pay for the construction of the same, which sewerage tax shall not exceed in any one year, two mills on the dollar of the assessed value of the property within such district, or may pay a part of the cost of such construction out of the general revenue, a part by the assessment of adjacent property, and a part by levying a tax upon all the property within the sewerage district, or may pay for the same by pursuing any two of the methods herein named.

SEC. 2. It shall be the duty of such city council to require the work of constructing such sewers to be done under contract therefor, to be entered into with the lowest responsible bidder, and bonds with surety for the faithful performance of such work shall be required to be given by the contractors; *provided*, that all bids for such work may be rejected by such council if by them thought to be exorbitant, and new bids ordered.

SEC. 3. All special tax levied for the construction of sewers under this act shall be payable by the owners personally at the time of such assessment, and shall also be a lien upon the lots and lands so assessed and shall bear such rate of interest, and the said property assessed may be sold for the payment thereof, in the same manner at any regular or adjourned sale or special sale called therefor, with the same forfeitures, penalties and right of redemption and certificates and deeds on such sales shall be made in the same manner and with like effect as in case of sales for non-payment of the ordinary annual taxes of such cities respectively, as now or hereafter provided by law in respect thereto, or the city council may provide by ordinance for the sale of such assessed property at a special tax sale to be called therefor, after giving notice therefor three consecutive weeks in one of the newspapers published in said city; the last of which publications shall be at least ten days before the day of sale.

Commissioners
to assess dam-
ages.

In relation to
construction:
by whom.

City may pro-
vide for con-
struction of
sewers.

Sewerage dis-
tricts.

Sewerage tax.

Bids for work
to be taken by
city council.

Tax shall be
a lien.

Tax sales.

Mode of assessment.

SEC. 4. Such city council may provide by ordinance for the particular mode of making and returning the assessments hereinbefore authorized, and payment of such assessments may, if so directed by said council, be enforced by suit in court, in the manner and by the proceedings provided for by sections four hundred and seventy-eight, four hundred and seventy-nine and four hundred and eighty-one of the code.

Powers conferred in Code, § 465, not impaired.

SEC. 5. Nothing in this act contained shall take away, impair or interfere with the powers conferred by section four hundred and sixty-five of the code, for the construction of sewers, and payment therefor in whole as therein provided.

Cross sewers.

SEC. 6. The city council shall have power to provide, by ordinance, terms and conditions on which cross sewers may be attached to, or connected with main sewers; and in cases where sewers have been constructed in whole or in part by special assessment, may pay unto the parties who have been so assessed, the money, or a part thereof charged and collected for the privilege of attaching such cross sewers.

Chapter 54,
16th G. A.,
not affected.

SEC. 7. *Provided*, That nothing in this section shall be held or taken to repeal, impair or in any manner affect chapter 54, acts of the sixteenth general assembly, or any provision thereof.

[As to sewerage in cities under special charter, see 16th G. A., ch. 54, not inserted. See note to § 551.]

[Eighteenth General Assembly, Chapter 55.]

Sewerage for state buildings.

SEC. 1. In any incorporated city, or city acting under special charter, within the limits of which may be situated any state buildings, the trustees or commissioners having charge of said buildings or of the construction thereof, shall have authority to construct sewers therefor, through or under any of the streets or alleys of said city.

SEC. 2. All acts or parts of acts, conflicting with this act are hereby repealed.

ORDINANCES, FINES AND SUITS.

Make and publish ordinances; enforce penalties and fines.
R. & § 1071, 1072, 1073.

SEC. 482. Municipal corporations shall have power to make and publish, from time to time, ordinances, not inconsistent with the laws of the state, for carrying into effect or discharging the powers and duties conferred by this chapter, and such as shall seem necessary and proper to provide for the safety, preserve the health, promote the prosperity, improve the morals, order, comfort, and convenience of such corporation and the inhabitants thereof, and to enforce obedience to such ordinances by fine not exceeding one hundred dollars, or by imprisonment not exceeding thirty days.

The omission from this section of "forfeitures" contained in Rev. § 1072, as a method of enforcing an ordinance, does not prevent the city from providing in a license that it shall be forfeited on certain conditions, and enforcing such forfeiture: *Hurber v. Baugh*, 43-514.

A municipal corporation cannot be enjoined from passing an act because, if passed, it would be unconstitutional, or void: *Des Moines Gas Co. v. City of Des Moines*, 44-505.

A court cannot take judicial notice of an ordinance of a city: *Garrin v. Wells*, 8-236; *Wolfe v. City of Keokuk*, 48-129.

SEC. 483. Fines may, in all cases, and in addition to any other mode provided, be recovered by suit or action before a justice of the peace or other court of competent jurisdiction, in the name of the proper municipal corporation, and for its use. And in any such suit or action where pleading is necessary, it shall be sufficient to declare generally for the amount claimed to be due in respect to the violation of the ordinance, referring to its title and the date of its adoption or passage, and showing as near as may be the facts of the alleged violation.

The mayor may take judicial notice of a city ordinance; see notes to § 506. criminal prosecutions, and applies solely to civil actions for the recovery of a fine or forfeiture: *Goodrich v. This section has no reference to Brown*, 30-291.

SEC. 484. Whenever a fine and costs imposed for the violation of any ordinance are not paid, the person convicted may, by the officer having jurisdiction of the case, be committed until the fine and costs are paid, not to exceed thirty days.

SEC. 485. Any city or town shall have the right to use the jail of the county for the confinement of such persons as may be liable to imprisonment under the ordinances of such city or town, but it shall be liable to the county for the cost of keeping such prisoners.

SEC. 486. All suits for the recovery of any fine, and prosecutions for the commission of any offense made punishable as herein provided, shall be barred in one year after the commission of the offense for which the fine is sought to be recovered, or the prosecution is commenced.

[Eighteenth General Assembly, Chapter 77.]

SEC. 1. On an information for a violation of an ordinance of an incorporated town or city of the second class, the defendant shall not be entitled to a trial by jury, but shall be tried by the court without a jury except on appeal. All acts or parts of acts inconsistent with this are hereby repealed.

SEC. 487. All municipal corporations are hereby empowered to provide that all able bodied male residents of the corporation between the ages of twenty-one and fifty years, shall, between the first day of April and the first day of September in each year, either by themselves or satisfactory substitutes, perform two days, labor upon the streets, alleys, or highways within such corporation, at such times and places as the proper officer may direct, and upon three days' notice in writing given. They may further provide that, for each day's failure to attend and perform the labor as required at the time and place specified, the delinquent shall forfeit and pay to the corporation any sum not exceeding two dollars for each day's delinquency, and that all such sums remaining unpaid on the first day of September in each year may be treated and collected as taxes on property, and the same shall be a lien on all the property of the delinquent that may be listed for taxation and assessed and owned by him on the first day of November of the same year.

SEC. 488. Any city or incorporated town may aid in the construction and repair of any highway leading thereto, by appropri-

Fines recovered by action:
pleading therein.
R. & 1074.

Offender committed to jail.
13 G. A. ch. 81.
§ 2.

May use county jail.

Same, § 1.

Suits; when barred.
R. & 1075.

Labor on highways; penalty for failure:
how enforced.
14 G. A. ch. 31.

May aid in construction of highways outside corporate limits. **14 G. A. chs. 13, 28.** **ating therefor a portion of the highway tax belonging to said city or incorporated town, not exceeding fifty per cent. thereof, annually, as hereinafter provided.** When a petition shall be presented to the council or trustees, signed by one-third of the resident tax-payers of said city or town, asking that the question of aiding in the construction or repair of any highway leading thereto be submitted to the voters thereof, the council or trustees, immediately, shall give notice of a special election by posting notice in five public places in said town, at least ten days before said election, which notice shall specify the time and place of holding said election, the particular highway proposed to be aided, the proportion of the highway tax then levied and not expended, or next thereafter to be levied, to be appropriated; at which election the question of "appropriation" or "no appropriation" shall be submitted, and if a majority of votes polled be for appropriation, then the council or trustees may aid in the construction and repair of said highway to the extent of said appropriation, in the same manner as they otherwise would if said highway was within the corporate limits of said city or town; but no part of such highway tax shall be expended more than two miles from the limits of such city or town.

Special election as to making appropriation.

Provided, that in incorporated towns, and cities of the second class, whether organized under a special charter or under the general incorporation law, with a population under ten thousand inhabitants, whenever one-third of the resident tax-payers of such incorporated town or city shall petition the trustees or council of such incorporated town or city, asking that a portion of the highway tax of such incorporated town or city may be used to aid in the construction or repair of highways outside and within three miles of the limits of such incorporated town or city, such trustees or council may, upon the presentation of such petition, order a part of the highway tax of such incorporated town or city, not exceeding twenty-five per cent. thereof, to be used and expended to aid in the construction or repair of highways outside and within three miles of the limits of such incorporated town or city.

[As amended by 18th G. A., ch. 52, which added the proviso.]

Ordinances read : contain but one subject : how passed. **R. § 1122.** **14 G. A. ch. 111, § 5.**

Ordinances of incorporated towns.

SEC. 489. All ordinances and resolutions, or orders for the appropriation or payment of money, shall require for their passage or adoption the concurrence of a majority of all the trustees of any municipal corporation; ordinances of a general or permanent nature shall be fully and distinctly read on three different days, unless three-fourths of the council shall dispense with the rule; no ordinance shall contain more than one subject, which shall be clearly expressed in its title, and no ordinance or section thereof shall be revised or amended unless the new ordinance contain the entire ordinance or section reviewed or amended, and the ordinance or section so amended shall be repealed. *Provided*, that in incorporated towns, ordinances and resolutions, or orders for the appropriation or payment of money, shall require for their passage or adoption a concurrence of four trustees, or of three trustees and the mayor.

[As amended by 18th G. A., ch. 146, § 2, adding the proviso.]

An ordinance defining and prescribing the punishment for certain offenses, and in which many such offenses are included, does not contain "more than one subject:" *The State v. Wells*, 46-662.

Where but one section of an ordinance is amended, that section alone need be contained entire in the amendment: *Town of Decorah v. Dunstan*, 38-96.

The words "for the appropriation or payment of money" limit "resolutions," as well as "orders," and other resolutions than those, "for the appropriation or payment of money,"

(for instance, to change boundaries of a city or town) do not require the concurrence of a majority of all the trustees. The requirements of the latter portion of the section as to reading, etc., apply only to ordinances and not to resolutions: *Strohm v. City of Iona City*, 47-42.

Where four members of the council voted to suspend the rules as to three readings, and two other members, though present, did not vote, and the ordinance was thereupon passed, *held*, that it was not properly passed and was void: *Horner v. Rowley*, 51-620.

SEC. 490. No trustee or member of any council shall, during the time for which he has been elected, or for one year thereafter, be appointed to any municipal office which shall be created, or the emoluments of which shall be increased during the term for which he shall have been elected, except in the cases provided in this chapter; nor shall any such trustee be interested, directly or indirectly, in the profits of any contract or job for work, or services to be performed for the corporation.

SEC. 491. The emoluments of no officer whose election or appointment is required by this chapter, shall be increased or diminished during the term for which he shall have been elected or appointed; nor shall any change of compensation affect any officer whose office shall be created under the authority of this chapter during his existing term, unless the office be abolished; and no person who shall have resigned or vacated any office shall be eligible to the same during the time for which he was elected or appointed, when during the same time the emoluments had been increased.

The term of office, as here contemplated, commences with the election, and not with the qualification of the officer: *Cox v. City of Burlington*, 43-612. *Held*, that an ordinance could not be passed under 17 G. A. ch. 56, which allows cities of the first

class to change the method of compensation of police judges, marshals, etc. from fees to a fixed salary, which should change the compensation of such officers during the term of office for which they were elected: *Bryan v. City of Des Moines*, 51-590.

SEC. 492. All ordinances shall, as soon as may be after their passage, be recorded in a book kept for that purpose and be authenticated by the signature of the presiding officer of the council and the clerk, and all by-laws of a general or permanent nature, and those imposing any fine, penalty, or forfeiture, shall be published in some newspaper of general circulation in the municipal corporation, and it shall be deemed a sufficient defense to any suit or prosecution for such fine, penalty, or forfeiture, to show that no such publication was made; *provided*, however, that if no such newspaper is published within the limits of the corporation, then and in that case, such by-laws may be published by posting up three copies thereof in three public places within the limits of the corporation, two of which places shall be the post office and the mayor's office of such town or city; and such by-laws

Councilmen and trustees
not eligible to office: nor to be interested in contract.
R. § 1122

Salary not increased or diminished during term of office.
R. § 1122

Ordinances recorded and published.
R. § 1133.
11 G. A. ch. 34
§ 1

and ordinances shall take effect and be in force at the expiration of five days after they have been published.

[The word "or" in the eighth line, between "suit" and "prosecution," as it stands in the original, is "as" in the printed code.]

SEC. 493. On the passage or adoption of every by-law or ordinance, and every resolution or order to enter into a contract by any council of any municipal corporation, the yeas and nays shall be called and recorded; and to pass or adopt any by-law, ordinance, or any such resolution or order, a concurrence of a majority of the whole number of members elected to the council shall be required; all appointments of officers by any council shall be made *viva voce*, and the concurrence of a like majority shall be required and the names of those, and for whom they voted, on the vote resulting in an appointment, shall be recorded. No money shall be appropriated by the council except by ordinance. *Provided*, that in incorporated towns, by-laws, ordinances, resolutions, or orders to enter into any contract, shall require for their passage or adoption a concurrence of four trustees, or of three trustees and the mayor.

[As amended by 18th G. A., ch. 146, § 3, adding the proviso.]

The method of appointing officers here provided, must be followed in filling vacancies in an elective office under § 530. *The State v. Dickie*, 47-629.

This section defines how the order to contract shall be made and evidenced when directed by the council,

but it is not a limitation on the power of the city to contract otherwise. Municipal corporations may, through their authorized agents, contract in parol the same as individuals: *City of Indianola v. Jones*, 29-282; *Duncombe v. City of Fort Dodge*, 38-281.

Two-thirds
vote required
to make im-
provements.
R. § 1135.

SEC. 494. No street or highway shall be opened, straightened, or widened, nor shall any other improvement be made which will require proceedings to condemn private property without the concurrence, in the ordinance or resolution directing the same, of two-thirds of the whole number of the members elected to the council, and the concurrence of a like majority shall be required to direct any improvement or repair of a street or highway, the cost of which is to be assessed upon the owners of the property, unless two-thirds of the owners to be charged therefor shall petition in writing for the same.

Tax certified to
auditor and
collected as
other taxes by
county treas-
urer.
R. § 1123.
10 G. A. ch. 25,
§ 2.

SEC. 495. The council or trustees, as the case may be, of each municipal corporation is required to cause to be certified to the county auditor, on or before the first Monday of September of each year, the percentage or number of mills on the dollar of tax levied for all city purposes by them on the taxable property within said corporation for the year then ensuing, as shown by the assessment roll of said city for said year, and the said auditor is required to place the same on the tax books of the county in the same manner as county taxes are placed thereon, which tax for municipal purposes shall be collected by the county treasurer; and in all things relating to the collection of the same, and the sale of real or personal property, he is authorized and required to proceed according to the provisions of the statutes regulating the sale of property for delinquent state and county taxes, and in all sales for such, or any delinquent taxes for municipal purposes, if there be

other delinquent taxes due from the same person, or lien on the same property, the sale shall be for all the delinquent taxes; and such sales, and all sales made under or by virtue of this section or the provisions of law herein referred to, shall be of the same validity, and, in all respects, be deemed and treated as though such sales had been made for the delinquent state or county taxes exclusively. And in any city or town incorporated under or by special charter, which now is, or hereafter may be regulated by or subject to the general incorporation laws all delinquent taxes, except such as were levied to pay indebtedness created to take stock or aid in the building of railways, remaining unpaid upon the tax books of such city or town, shall be certified at the time, collected and paid over as above directed. And the county treasurer shall include said delinquent taxes so certified with the delinquent state and county taxes on his books, and collect the same by sale of real or personal property in the same manner as is by statute required for delinquent state and county taxes; and all sales of property for such delinquent municipal taxes shall be as valid, and, in all respects, be deemed and treated as though such sales had been made for delinquent state and county taxes.

[The word "tax" in the ninth line of the section, is erroneously printed "taxes" in the printed code, and so also "or" in the twenty-first line is printed "and." For similar provision as to cities under special charter, see 17th G. A., ch. 99, not inserted. See note to § 551.]

These provisions as others of the general law as to cities and towns, apply only to those organized under such general law, and not to those having special charters. (Decided under Rev. § 1123): *Burk v. Jeffries*, 20-145.

In cities acting under special charter in which city taxes are made a perpetual lien upon real estate, and

the city collector is authorized to collect the same by sale, a sale under § 871 for state and county taxes, does not divest the property from the lien of city taxes, and the purchaser takes subject thereto, nor does the sale for city taxes of one year divest the property of the lien of city taxes for former years: *Dennison v. City of Keokuk*, 45-266.

SEC. 496. The amount which may be so certified; assessed, and collected, shall not exceed ten mills on the dollar, to defray its general and incidental expenses.

The tax provided in § 3049 may be this and the following section: *Rice* in addition to the tax authorized by *v. Walker*, 44-458.

SEC. 497. For the purpose of creating a sinking fund for the gradual extinguishment of the bonds and funded debt of any municipal corporation, the council thereof may, in their discretion, annually, levy and collect, in addition to the other taxes of said corporation, a tax of not more than two mills on the dollar upon the assessed value of said property appraised and returned as aforesaid, which shall be paid into said treasury and be applied by order of the city council towards the extinguishment of the said bonds and funded debt, and to no other purpose whatever.

Taxes limited.
R. § 1124.

Sinking fund
may be created
by taxation.

R. § 1125.

13 G. A. ch. 59.

See note to preceding section.

SEC. 498. The treasurer of the county shall pay over to the treasurer of any municipal corporation, all moneys received by him arising from taxes levied belonging to such municipal corporation, on or before the first day of March in each year; and such moneys as said county treasurer may receive after that time, for

County treas-
urer to pay
over to city
treasurer.

R. § 1126.

delinquent taxes belonging to such corporation, he shall pay over to the treasurer thereof when demanded.

May tax dogs
and domestic
animals.
R. § 1128.

SEC. 499. The council of any municipal corporation shall have power, whenever in their opinion the interests of the corporation require it, to lay and collect a tax on dogs and other domestic animals not included in the list of taxable property, for the state and county purposes; which said tax shall be collected by the collector of such corporation and paid into the treasury thereof.

[In the printed code "which" in the fifth line is erroneously printed "and." As to powers in regard to dogs, given to cities under special charter, see 17th G. A., ch. 25, not inserted. See note to § 551.]

Loans negotia-
ted and lim-
ited.
R. § 1129.

SEC. 500. Loans may be negotiated by any municipal corporation in anticipation of the revenues thereof, but the aggregate amounts of such loans shall not exceed the sum of three per cent. upon the taxable property of any city or town.

[Amended by the following, Sixteenth General Assembly, Chapter 95.]

SEC. 1. Section five hundred, of chapter 10, title IV, of the code of Iowa, *be [is]* amended by striking out the word "three" in the third line of said section, and inserting the word "five;" *pro-*
vided, that the provisions of this act shall not apply to cities having over six thousand inhabitants, or less than four thousand five hundred inhabitants, and in all other cases such loans shall not exceed the sum of three per cent. on such property.

[Sixteenth General Assembly, Chapter 57.]

May settle and
adjust indebt-
edness,

And issue new
securities.

May levy spe-
cial tax to pay
principal and
interest.

Not to apply to
current ex-
penses.

New securities.

SEC. 1. Cities and towns are hereby authorized, upon such terms as they may deem just and for their best interest, to settle, adjust, renew or extend such indebtedness as may be owing by or claimed against them and evidenced by the bonds or other negotiable promissory instruments of such municipal corporation, and to issue new securities for such indebtedness, except as hereinafter mentioned.

SEC. 2. Said several corporations are hereby authorized, whenever any extension or renewal of such indebtedness is made, to provide for the payment of the interest and principal of such extended or renewed indebtedness, by the levy and collection of the necessary taxes, at the same time and in the same manner as other taxes; and the levy, collection and payment of such taxes may be enforced by proper legal process, when necessary, in addition to the ordinary means provided by law for the levy and collection of taxes.

SEC. 3. This act is intended to and shall apply only to the settlement, adjustment and extension or renewal of bonds and securities heretofore issued and outstanding at the time of this act, and not including warrants or other evidences of indebtedness issued or incurred for current expenses of such corporations.

SEC. 4. New bonds or securities issued by virtue hereof, shall in no case be for a greater sum than the principal and accrued interest unpaid on the bond or security for which such new bond or security may be given.

ELECTION AND QUALIFICATION OF OFFICERS.

SEC. 501. The first Monday of March shall be the regular an-

nual period for the election of municipal officers, and all officers whose election is provided for in this chapter, or may be provided for by ordinance, shall be elected on that day. The trustees or council of every municipal corporation shall direct the place or places for holding elections for municipal officers, and whenever the corporation is divided into wards or precincts, there shall be one such place in each ward and precinct, and any person who, at the time of any election of municipal officers, would be a qualified elector under the laws of the state for county officers, and shall have actually resided in the ward or precinct in which he offers to vote for the ten days last preceding the election, shall be deemed a qualified voter; and all elections shall in all respects be held and conducted in the manner prescribed by law in case of township elections.

[The word "township" in the original, and as here given (last line) is "county" in the printed code.]

SEC. 502. At all elections in cities and incorporated towns which are not divided into election districts or wards, the mayor and trustees, any three of whom shall be a quorum, shall serve as judges, and the recorder shall serve as clerk, and after canvassing the votes which may be given at such election, they shall declare the result, and the recorder shall make out and deliver to each person elected to any office in such city or town a certificate of such election.

SEC. 503. The returns of all municipal elections in cities and incorporated towns which are divided into election districts or wards, shall be made to the clerk or recorder of the corporation, and shall be opened by him on the third day after election. He shall call to his assistance the mayor of the corporation, or if there be no mayor, or the mayor shall have been a candidate at such election, then any justice of the peace of the county, and shall, in his presence, make out an abstract and ascertain the candidates elected in all respects as required by law for the canvass of the returns of county elections, and shall, in like manner, make out a certificate as to each candidate so elected and cause the same to be delivered to him or to be left at his place of abode.

SEC. 504. All officers elected or appointed in any municipal corporation, shall take an oath or affirmation to support the constitution of the United States and the constitution of the state of Iowa, and the trustees or council of any municipal corporation may require from such officers, as they may think proper, a bond, with proper penalty and surety, for the faithful discharge of the duties of their office; and such trustees or council shall have the power to declare the office of any person appointed or elected to any office who shall fail to take the oath of office, or give bond when required, for ten days after he shall have been notified of appointment or election, vacant, and proceed to appoint as in other cases of vacancy.

SEC. 505. The compensation of the council or trustees shall not exceed one dollar to each member for every regular or special meeting of the board, and shall not exceed fifty dollars to each in any one year.

Annual election:
places for
holding: qualifi-
cation of
voters.
R. § 1130.

10 G. A. ch. 23,
§ 4.

Elections:
holding of: re-
sult declared.
certificate.
R. § 1131.

Returns of: to
whom made:
canvass.
R. § 1131.

Oath of office:
bond: vacancy.
R. § 1132.

Compensation
of council or
trustees.
R. § 1033.

SEC. 506. The mayor of each city or incorporated town shall be a magistrate and conservator of the peace, and, within the jurisdiction of his office, have the jurisdiction of a justice of the peace in all matters, civil and criminal, arising under the laws of the state or the ordinances of such city or town; and the rules of law regulating proceedings before a justice of the peace shall be applicable to proceedings before such mayor; but the criminal jurisdiction hereby conferred shall be co-extensive with the county in which such city or town is situated.

The mayor of a city may take judicial notice of the city ordinances in a prosecution for their violation, without their being pleaded in the manner required in § 483: (Following *Conboy v. City of Iowa City*, 2-90; and *State v. Leiber*, 11-407); *Town of Laporte City v. Goodfellow*, 47-572.

The jurisdiction of the mayor under this section is not exclusive, but concurrent with that of justices of the peace: *Jaquith v. Royce*, 42-406, and the rules governing changes of venue before justices are applicable in proceedings before a mayor: *Finch v. Marvin*, 46-384; but the filing of a motion for a change of venue does not deprive the mayor of his jurisdiction, and if the motion is overruled, the ruling is, at most, simply an er-

ror, and a judgment subsequently rendered is not void: *City of Ottumwa v. Schaub*, 52-515.

Rules regulating appeals from justices (§ 4697) are applicable to proceedings before the mayor: *The State v. Hoag*, 46-377.

This section is not applicable to police courts. (§ 543): *Zelle v. McHenry*, 51-572.

Although the mayor is clothed with the jurisdiction of justices of the peace, there is no provision for allowing him the same or any other fees in criminal cases when exercising such jurisdiction. By an omission, no compensation in such cases is provided and none can be recovered from the county: *Upton v. County of Clinton*, 52-311.

[Eighteenth General Assembly, Chapter 189.]

Jurisdiction
exclusive:
when.

SEC. 1. The mayor of cities of the second class or incorporated towns, shall have exclusive jurisdiction of violations of the city ordinances; provided, that if he is unable to hold court, or in case of his absence from the city or town, the action may be brought before any justice of the peace having an office in the city or town. All acts or parts of acts inconsistent with this act are hereby repealed.

OF THE CLASSES OF MUNICIPAL CORPORATIONS.

SEC. 507. In respect to the exercise of certain corporate powers and duties of certain officers, municipal corporations are divided into cities of the first and cities of the second class, and incorporated towns.

SEC. 508. Every municipal corporation having a population of fifteen thousand and upwards, shall be a city of the first class; every municipal corporation having a population exceeding two thousand, but not exceeding fifteen thousand, shall be a city of the second class; and every municipal corporation having a population not exceeding two thousand shall be deemed an incorporated town.

SEC. 509. The governor, auditor, and secretary of state, or any two of them, within six months after the returns of any census taken by authority of the state or any town or city council, have been filed in the office of the secretary of state, shall ascertain what cities of the second class are entitled to become cities

Defined by
population.
R. & 1078.

After each cen-
sus governor
to cause state-
ment of popu-
lation of cities
published.
R. & 1079.

of the first class, and what incorporated towns are entitled to become cities of their proper class. And the governor shall cause a statement thereof to be prepared by the secretary of state, which statement he shall cause to be published in some newspaper published in the city of Des Moines, and also in some newspaper printed in each of the cities and incorporated towns the grade of which shall have been so advanced, and a copy of said statement shall also be transmitted by the secretary of state to the next general assembly, and any such city or incorporated town shall, at the next regular annual period for the election of municipal officers, proceed to organize according to its new grade, by the election of officers properly belonging thereto, and on their election and qualification the term of service of any former officer shall expire.

[As amended by 15th G. A., ch. 52, inserting the words after "census" to and including "council." The word "shall" in the last line, as in the original, is omitted in the printed code.]

SEC. 510. So soon as the statement shall be published, as above provided, showing that any city or incorporated town will be entitled, at the next regular annual period for the election of municipal officers to be organized into a city of the first or second class, as the case may be, the proper authority of such city or incorporated town shall make and publish such ordinances as may be necessary to perfect such organization in respect to the election, duties, and compensation of officers or otherwise.

When class is changed, the proper ordinances to be passed.
R. & 1080.

OF INCORPORATED TOWNS.

SEC. 511. The corporate authority of incorporated towns organized for general purposes shall be vested in one mayor, one recorder, and six trustees, to be elected by the people, who shall be qualified electors residing within the limits of the corporation, and who shall constitute the council of the incorporated town, any five of whom shall constitute a quorum for the transaction of business. The mayor and recorder shall hold their offices for one year, and the trustees shall hold their offices for three years. At the first election after this law is in force six trustees shall be elected, two of whom shall serve for one year, two for two years, and two for three years, to be determined by lot at the first meeting of the council after the trustees are qualified, and thereafter two trustees shall be elected annually.

Officers of
R. & 1081.

[The original section repealed and the foregoing substituted therefor, 17th G. A., ch. 9.]

SEC. 512. The mayor shall preside at all meetings of the council, and shall have the right to vote upon all questions coming before the council. In the absence of the mayor, the council shall elect one of their number to preside pro tempore. The recorder shall be clerk of the corporation, and shall attend all meetings of the council, and shall make a fair and accurate record of all proceedings, rules and ordinances made and passed by the council, and the same shall at all times be open to the inspection of the electors of the corporation, but in no event shall the recorder have the right to vote on any question before the council.

Mayor to pre-
side.
R. & 1082.

[The original section repealed and substitute enacted: 17th G. A., ch. 9. This substitute repealed and the foregoing substitute enacted: 18th G. A., ch. 146, § 1.]

Duties of re-
corder.

Vacancies.
R. § 1083.

SEC. 513. The council shall have power to order special elections to fill vacancies, which may happen in the board, from the qualified electors of the corporation, who shall hold their office until the next annual election and until their successors are elected and qualified, and in the absence of the mayor and recorder from any meeting of the council, the council shall have power to appoint any two of their number to perform the duties of mayor and recorder for the time being.

Treasurer and
other officers to
be elected:
compensation.
R. § 1084.

SEC. 514. The council of any incorporated town shall have power to provide by ordinance for the election of a treasurer, and such subordinate officers as they may deem necessary for the good government of the corporation, to prescribe their duties and compensation, or the fees they shall be entitled to receive for their services, and to require of them an oath of office, and a bond, with surety, for the faithful discharge of their duties. The election of any such officer shall be at the regular annual election, and no appointment of any officer shall endure beyond one week after the qualification of the members of the succeeding council.

Marshal: pow-
ers and duties.
R. § 1085.

SEC. 515. A marshal shall be appointed by the trustees, and shall be the principal ministerial officer of the corporation, and shall have the same power that constables have by law, co-extensive with the county, for offenses committed within the limits of the corporation. He shall execute the process of the mayor, and receive the same fees for his services that constables are allowed in similar cases.

Officers may be
removed.
R. § 1087.

SEC. 516. By the concurrent vote of five members of the council, the mayor, recorder, or any member of the council, or any officer of the corporation, may be removed from office; but no such removal shall be made without a charge in writing being made and an opportunity of hearing being given, unless the officer against whom the charge is made shall have removed out of the limits of the corporation, and when any officer shall cease to reside within the limits of the corporation, it shall be deemed a good ground for a removal from office.

OF CITIES.

Corporate au-
thority: in
whom vested.
R. § 1090.

SEC. 517. The corporate authority of cities organized under this chapter, shall be vested in a mayor and a board, to be denominated the city council, together with such officers as are in this chapter mentioned, or may be created under its authority.

Election of
mayor: term:
qualification:
duties.
R. § 1091.
16 G. A. ch. 25
§§ 1, 2.

SEC. 518. The mayor shall be elected biennially in cities of the first class, and annually in cities of the second class, by the qualified voters of the city. He shall be a qualified elector and reside within the limits of the city, and shall hold his office for the term for which he shall have been elected and qualified. He shall keep an office at some convenient place in the city, to be provided by the council, and shall keep the corporate seal of the city in his charge; he shall act as president of the city council, shall sign all commissions, licenses, and permits granted by the authority of the city council, and such other acts as by the law or ordinances may require his certificate.

[As amended by 16:1 G. A., ch. 58, inserting the clause as to his being president of the council.]

Under the Revision it was held that the mayor of cities of the second class was not the presiding officer nor a member of the city council: *Coe v. Van r. McCleary*, 22-75. (But this was remedied by 12 G. A., ch. 188—see Code, § 531—is to cities of the second

class. It seems, however, that under the ruling of the case just cited, the mayor was not, *ex officio*, president of the council in cities of the first class until the amendment of this section by 16th G. A., ch. 58.)

SEC. 519. In case of the mayor's death, disability, resignation, or other vacation of his office, the city council shall order a special election as soon as practicable, to fill the vacancy for the remainder of the time of office, and may appoint some qualified elector to act as mayor until such special election. The mayor of the city shall be its chief executive officer and conservator of the peace, and it shall be his special duty to cause the ordinances and the regulations of the city to be faithfully and constantly obeyed; he shall supervise the conduct of all the officers of the city, examine the grounds of all reasonable complaints made against any of them, and cause all the violations of their duty, or their neglect, to be promptly corrected or reported to the proper tribunal for punishment and correction; he shall have and exercise within the city limits the powers conferred upon the sheriffs of counties to suppress disorders and keep the peace; he shall also perform such other duties compatible with the nature of his office, as the council may from time to time require; he shall receive such salary, payable quarterly out of the city treasury, as may be provided by ordinance; but the amount of such salary shall neither be increased nor diminished during an incumbent's term of office.

Vacancy in office of mayor: powers enumerated.
R. & 1091.

SEC. 520. The numbers, divisions, and boundaries of the several wards of all cities heretofore incorporated, shall remain as fixed when this code goes into operation, until changed by the city council. Said council may at any time create new wards, or alter those now established, or the boundaries thereof, as may be deemed expedient; but in cities of the second class the number of wards now existing shall not be increased to a greater number than seven, nor decreased to a less number than three.

Wards: how changed.
R. & 1092.

[The original section repealed and the foregoing substituted; 18th G. A., ch. 26.]

SEC. 521. In cities of the second class the qualified electors of each ward shall, on the first Monday of March of each year, elect by a plurality of votes one member of the city council, who shall at the time be a resident of the ward and a qualified elector therein. His term of office shall be two years, so that there may always be in the council two members from the same ward whose term of office shall expire in different years; but at the first election held on the organization of a new city government under this chapter, two members of the city council shall be elected in each ward, and the city council shall determine by lot their term of service, so that one trustee from each ward may serve for two years, and one for one year. In cities of the first class, the qualified electors of each ward shall, on the first Monday of March of the year 1878, and each second year thereafter, elect, by a plurality of votes, one member of the city council, who shall at the time be a resident of the ward and a qualified elector thereof. And in each of the same years the qualified

Election of councilmen:
cities of second class.
R. & 1093.

Same: cities of first class.

Councilmen-at-large.

Proviso:
cities containing
more than
one township.

electors of cities of this class shall also elect two members at large of such city council, each of whom shall be a resident and qualified elector of the city in which he shall be so elected. The members of said council shall hold their offices for two years and until their successors are elected and qualified. As soon as the members of the city council of cities of the first class, elected at the first election after the passage of this act, shall have been qualified, the term of office of all members whose terms would not otherwise expire until the first Monday in March, 1879, shall at once cease and determine; *provided*, that when any city of the first class numbers within its corporate limits the whole or parts of two or more different townships, that only one of the aldermen-at-large herein provided for shall be elected from any one of such township[s] or part of townships.

[The original section repealed, and the foregoing enacted as a substitute; 17th G. A., ch. 14.]

Organization of
council: duties:
shall choose
clerk.
R. § 1008.

SEC. 522. The members elected for each city shall, on the second Monday after their election, assemble together and organize the city council. A majority of the whole number of members shall be necessary to constitute a quorum for the transaction of business, they shall be judges of the election returns and qualification of their own members; they shall determine the rule of their own proceedings and keep a journal thereof, which shall be open to the inspection and examination of any citizen; they may compel the attendance of absent members in such manner and under such penalties as they shall think fit to prescribe, and shall elect from their own body a temporary president; they shall also appoint from the qualified electors of the city, a city clerk who shall have the custody of all the laws and ordinances of the city, and shall keep a regular and correct journal of the proceedings of the council, and shall perform such other duties as may be required by the ordinance of the city. The clerk in office at the expiration of the term of service of any council, shall continue in office until his successor shall be appointed and qualified.

The provision that the council shall be judges of the election returns and qualification of their own members does not mean that they are to canvass the returns of the election; but they may go behind the returns and decide questions arising in respect thereto. It seems also that they are judges of the returns for all city off-

cers, including mayor. *Ex parte Strahl*, 16-369, 376.

As to who is permanent president of the council, see note to § 518.

The right to preside at a meeting of the council is a *franchise* which may be protected by proceedings in *quo warranto*: *Cochran v. McCleary*, 22-75.

Provide seal for
clerk: fees of
R. § 1004.

SEC. 523. Each city council shall cause to be provided for the clerk's office a seal, in the center of which shall be the name of the city, and around the margin the words "city clerk," which shall be affixed to all transcripts, orders, or certificates which may be necessary or proper to authenticate under the provisions of this chapter or any ordinances of the city. For all attested certificates and transcripts, other than those ordered by the city council, the same fees shall be paid to the clerk as are allowed to county officers for the same services.

SEC. 524. The city council shall possess all the legislative powers granted in this chapter and other corporate powers of the

city not herein, or by some ordinance of the city council, conferred on some officer of the city; they shall have the management and control of the finances, and all the property, real and personal, belonging to the corporation; they shall determine the times and places of holding their meetings, which shall at all times be open to the public; and the mayor, or any three members, may call special meetings, by notice to each of the members of the council personally served, or left at his usual place of abode; they shall appoint or provide by ordinance, that the qualified electors of the city, or of the wards or districts, as the case may require, shall elect all such city officers as may be necessary for the good government of the city, and for the due exercise of its corporate powers, and which shall have been provided for by ordinance, as to whose election or appointment provision has not herein been made; and all city officers whose term of service is not prescribed, and whose powers and duties are not defined by this chapter, shall perform such duties, exercise such powers, and continue in office such term of time, not exceeding one year, as shall be prescribed by ordinance; but all officers to be elected, shall be elected at the regular annual election for municipal corporations. The officers of cities shall receive such compensation and fees for their services as the council shall by ordinance prescribe.

As to duties and compensation of city solicitor, see note to § 532.

SEC. 525. The city council shall have power to establish a board of health, with all the powers and duties specified in sections four hundred and fifteen, four hundred and sixteen, four hundred and seventeen and four hundred and eighteen, of the ninth chapter of this title; to establish a city watch, or police, to organize the same under the general supervision of the mayor, or marshal, to prescribe their duties and powers, and to establish and organize fire companies and provide them with proper engines and such other instruments as may be necessary.

In establishing boards of health, etc., as here provided, the city acts as a *quasi* sovereignty, and is not responsible to individuals for the neg-

lect or non-feasance of its agents or officers in executing the powers so conferred: *Ogg v. City of Lansing*, 35-495.

SEC. 526. No charge or assessment of any kind shall be made or levied on any wagon or other vehicle, or the horses thereto attached, or on the owner thereof, bringing produce or provisions to any of the markets in the city for standing in or occupying a place in any of the market spaces of the city, or in the streets contiguous thereto, on market days and evenings previous thereto; but the city council shall have full power to prevent forestalling, to prohibit or regulate buckstressing in the markets, to prescribe the kind and description of articles which may be sold, and the stands or places to be occupied by the vendors, and may authorize the immediate seizure and arrest, or removal from the markets, of any person violating its regulations as established by ordinance, together with any article of produce in their possession, and the immediate seizure and destruction of tainted or unsound meat or other provisions.

Powers of council enumerated: compensation of officers.
R. § 1095.

May establish board of health and organize fire companies.
R. § 1096.

11 G. A. ch. 107.

Regulate markets.
R. § 1096.

SEC. 527. The city council shall have the care, supervision, and control of all public highways, bridges, streets, alleys, public squares, and commons within the city, and shall cause the same to be kept open and in repair, and free from nuisances; all public bridges exceeding forty feet in length, over any stream crossing a state or county highway, shall be constructed and kept in repair by the county; *provided*, that the city council may appropriate a sum not exceeding ten dollars per lineal foot to aid in the construction of any county bridge within the limits of such city, or may appropriate a like sum to aid in the construction of any bridge contiguous to said city on a highway leading to the same, or any bridge across any unnavigable river which divides the county in which said city is located from another state; and that no street or alley which shall hereafter be dedicated to public use by the proprietor of ground in any city, shall be deemed a public street or alley, or to be under the use or control of the city council, unless the dedication shall be accepted and confirmed by an ordinance especially passed for such purpose.

[As to transfer of portion of county bridge fund to city in certain cases, see 18th G. A., ch. 45, inserted following § 303.]

Property within a city is not subject to taxation by the township trustees for highway purposes: *Marks v. County of Woburn*, 47-452; *Hawley v. Hoops*, 12-516.

The city is only required to keep bridges, etc., in reasonable and ordinarily good repair: *Holmes v. City of Hamburg*, 47-348.

The county has a right to erect

public bridges on public highways, inside the limits of the city: *Bell v. Foutch*, 21-119; *Barrett v. Brooks*, 21-144.

Before the repeal of 13 G. A., ch. 84, which allowed cities to erect toll bridges, *held*, that the city might erect free or toll bridges at its option, and convert the one into the other: *Scott v. City of Des Moines*, 34-552.

SEC. 528. The city council shall have power to establish and construct and regulate landing places, wharves, docks, piers, and basins, and to fix the rates of landing, wharfage, and dockage, and to use for the purpose aforesaid any public building or any property belonging to or under the control of the city, and the city council shall have the use and control, for the above purpose, of the shore or bank of any lake or river not the property of individuals, to the extent, and in any manner, that the state can grant such use or control. The city council shall have the power to appoint or provide that the qualified electors shall elect harbor masters, wharf masters, port wardens, and other officers usual and proper for the regulation of the navigation, trade, or commerce of such city, to define their duties and powers, and to fix their fees or compensation. Copies of examination and surveys, and of the proceedings of any port warden in the usual discharge of the duties of such officers, certified under his hand and seal, shall be presumptive evidence of the facts therein duly stated.

A city may establish wharves and provide that fees be paid for the use thereof; and, in the exercise of its police powers may designate the place where boats shall receive and discharge freights and passengers, and these acts are not in conflict with the constitution of the United States: *City of Keokuk v. Keokuk N. L. P.*

Co., 45-196; *City of Muscatine v. same*, *id.* 185, and the city may prohibit the landing of boats, etc., at any other place within the city limits, even upon the premises of the owner: *City of Dubuque v. Stout*, 32-80, and may provide that boats, etc., landing elsewhere than at such wharves, even on the premises of the owner, shall

pay a reasonable wharfage fees, but the right to collect wharfage must follow and not precede the establishment of wharves: *S. C., Id.* 47.

It seems that the city is not entitled to collect wharfage, where it has constructed no wharf and provided no conveniences for landing: *City*

of Muscatine v. Hershey, 18-39.

Where the city has permitted the erection and use for years of a private wharf, it cannot without compensation to the owner appropriate the benefits of such wharf by demanding wharfage from boats landing thereat: *Grant v. City of Davenport*, 18-179.

SEC. 529. The city council of any city shall have the exclusive power to establish and to regulate, and to license ferries from such city, or any landing therein, to the opposite shore, or from one part of said city to another, and in granting such license to impose such reasonable terms and restrictions in relation to the keeping of such ferries, and the time, manner, and rates of the carriage and transportation of persons and property as the city council may prescribe, and the city council shall have power to provide for the revocation of any such license, and for the punishment by proper fines and penalties of the violation of any ordinance prohibiting unlicensed ferries, or regulating those established and licensed.

License and
regulate fer-
ries.
R. § 1099.

SEC. 530. Any member of the city council may be expelled or removed from office by a vote of two-thirds of all the members elected to the city council, but not a second time for the same cause; any officer appointed by the city council may be removed from office by a vote of two-thirds of all the members elected to the city council, and provision may be made by ordinance as to the mode in which charges shall be preferred and a hearing be had; in all cases of vacancies in the city council they shall be filled by special election, and in case any office of an elective officer, except members of the city council, shall become vacant before the regular expiration of the term thereof, the vacancy shall be filled by the city council until a successor is elected and qualified, and such successor shall be elected for the unexpired term at the first annual election that occurs after the vacancy shall have happened.

Removal from
office and va-
cancies.
R. § 1101.

The filling of vacancies in elective offices must be by a majority of all the council, as provided in § 493: *The State v. Dickie*, 47-629.

OF CITIES OF THE SECOND CLASS.

SEC. 531. The mayor of cities of the second class shall be the presiding officer of the city council, and shall constitute a member of such council and shall have a casting vote where there is a tie in all cases including the election of officers and passage of ordinances, and all other matters provided for in sections four hundred and eighty-nine and four hundred and ninety-three of the code.

Mayor to pre-
side and have
casting vote
in council.
12 G. A. ch. 188.

[The original repealed, and the foregoing substitute enacted, adding the portion following the word "tie;" 18th G. A., ch. 12.]

SEC. 532. The qualified electors of each city of the second class shall elect a city treasurer, who shall hold his office for one year, and a city solicitor, who shall hold his office for two years; each of said officers shall have such powers and perform such duties as are prescribed in this chapter, or by any ordinance of the city council not inconsistent therewith. In all such cities,

Election of of-
ficers and
terms.
R. § 1103.
7 G. A. ch. 24.
14 G. A. ch. 7.

the marshal, deputy marshal, and police, shall be elected by the city council, and shall hold their offices during its pleasure.

[In the sixth line, "therewith" as it is in the original, is "herewith" in the printed code. As to election or appointment of marshal in cities under special charter see 18th G. A., ch. 24, not inserted. See note to § 551.]

Where neither the duties nor the authority of such officer, as the compensation of city solicitor are interests of the city may require, and fixed by the council, he should, unless otherwise instructed, perform he may recover reasonable compensation therefor: *Kinnie v. City of Waverly*, 42-437; *Same v. Same*, *Id.* 486.

Powers and
duties of mar-
shal.
R. § 1104.

SEC. 533. The marshal of the cities of the second class shall execute and return all writs and processes to him directed by the mayor, and, in criminal cases, or cases in violation of city ordinances, he may serve the same in any part of the county; he shall suppress all riots, disturbances, and breaches of the peace, apprehend all disorderly persons in the city, and shall pursue and arrest any person fleeing from justice in any part of the state; he shall apprehend any person in the act of committing any offense against the laws of the state or ordinances of the city, and forthwith bring such person before the mayor, or other competent authority for examination and trial; he shall have, in the discharge of his proper duties, like power, be subject to like responsibilities, and shall receive the same fees as sheriffs and constables in similar cases.

OF CITIES OF THE FIRST CLASS.

Message of
mayor: ap-
pointment of
police.
R. § 1105.

SEC. 534. The mayor of the cities of the first class, shall, at the first regular meeting of the city council in the month of April of every year, and at such other times as he may deem expedient, report to the city council concerning the municipal affairs of the city, and recommend such measures as to him may seem advisable; he shall appoint one chief of police and as many subordinate officers and watchmen as the city council may deem necessary, who shall hold their appointments during the pleasure of the mayor; he shall have power, in cases of emergency, to appoint as many special watchmen as he may think proper, but such appointments shall be reported to and subject to the action of the city council at its next meeting.

[Sixteenth General Assembly, Chapter 33.]

What cities.

City council
may elect cer-
tain officers.

SEC. 1. In all cities of the first-class incorporated under the general incorporation laws of this state, whose population according to the census of 1875 was not less than nineteen thousand, the city council at the first regular meeting in April in each and every year thereafter shall elect one city marshal, one city solicitor, one city physician, one building commissioner, one city civil engineer, one superintendent of city markets, one street commissioner, and when deemed necessary by the council, one wharfmaster, who shall hold their respective offices for the term of one year and until their successors are elected and qualified, they shall be responsible to the city council for the true and faithful performance of the duties of their respective offices and shall receive for their services such compensation as the city council shall by ordinance

from time to time provide, and for the election of the officers provided for in this section it shall require an affirmative vote of a majority of all the members elected to the city council.

SEC. 2. The qualified electors of every such city shall elect one treasurer, one auditor, and one police judge, who shall hold their respective offices for the term of two years and until their successors are elected and qualified. Election of certain other officers.

Each of said officers shall have such powers and perform such duties as are prescribed by chapter 10, title IV, of the code, and in any ordinance of the city not inconsistent with the code.

The officers provided for in this and the preceding section shall each be required to give bonds with two sureties each in such sum for the faithful performance of their respective duties as the city council shall from time to time prescribe by ordinance, and the officers provided for in this act may be removed from their respective offices as is provided by section five hundred and thirty of the code; *provided*, that the provisions of this act shall not apply to cities organized under special charter. Officers to give bond. Not to apply to cities under special charters.

[As amended in both sections by 17th G. A., ch. 20, §§ 1 and 2; § 3 of which act is as follows:]

SEC. 3. So much of section five hundred and thirty-four of the code as was superseded by chapter 33 of the sixteenth general assembly, is hereby revived, anything in sub-division one of section forty-five of the code, to the contrary notwithstanding. Code, § 534 revived.

SEC. 535. The qualified electors shall elect a marshal, a civil engineer, a treasurer, an auditor, a solicitor, police judge, and a superintendent of the market, who shall hold their offices for two years, and until their successors are elected and qualified; each of said officers shall have such powers and perform such duties as are prescribed in this chapter; or in any ordinance of the city, not inconsistent herewith. Election of officers and terms. R. § 1106. 13 G. A. ch. 12.

SEC. 536. The city marshal shall execute and return all process to him directed by the mayor or judge of the police court, and shall attend on the sittings of said court; he shall have power to execute any such process, by himself or deputy, in any part of the county; he shall suppress all riots, disturbances, and breaches of the peace, apprehend all persons committing any offense against the laws of this state or the ordinances of the city, and forthwith bring such persons before the proper authority for examination or trial; he shall have power to pursue and arrest any person fleeing from justice in any part of the state, and to receive and execute any proper authority for the arrest and detention of criminals fleeing or escaping from other places or states, and to appoint one or more deputies for whose official acts he shall be responsible; he shall have, in the discharge of his proper duties, like powers, be subject to like responsibilities, and shall receive the same fees as sheriffs and constables in similar cases. Powers and duties of marshal. R. § 1107.

[The marshal may be given a fixed salary in lieu of fees. See 17th G. A., ch. 56, inserted following § 550.]

The county is not liable to the city marshal for fees for services in criminal cases, notwithstanding the last clause of this section. He is a city officer, and is presumed to be payable by the city: *Christ v. Polk Co.*, 48-

302.

In cases where for the same services the fees allowed to sheriffs are greater than those allowed to consta-

bles, the marshal can only recover | *City of Des Moines*, 51-590.
fees allowed constables : *Bryan v.*

Appointment
of police;
powers, duties,
and jurisdiction
thereof.
R. § 1108.

SEC. 537. The city council shall, by a general ordinance, direct the number of officers of the police and watchmen to be appointed. They shall also provide, in addition to the regular watch, for the appointment of a reserved watch, to consist of a suitable number of persons in each ward, to be called into duty as the council may prescribe, and by the mayor or officers of police under his direction, in special cases of emergency. The duty of the chief and other officers of the police, and of the watchmen, shall be, under the direction of the mayor and in conformity with the ordinances of the city, to suppress all riots, disturbances, and breaches of the peace; to pursue and arrest any person fleeing from justice in any part of the state; to apprehend any and all persons in the act of committing any offense against the laws of the state or the ordinances of the city, and forthwith to bring such person or persons before the police court or other competent authority for examination and at all times to diligently and faithfully enforce all such laws, ordinances, and regulations for the preservation of good order and public welfare as the city council may ordain, and for such purposes they shall have all the power of constables. The mayor, marshal, chief of police, and watchmen of the city may, upon view, arrest any person who may be guilty of a breach of the ordinances of the city, or of any crime against the laws of the state, and may, upon reasonable information, supported by affidavits, procure process for the arrest of any person who may be charged with a breach of any of the ordinances of the city. The city council shall have the power to prescribe by ordinance the width of the tires of all wagons, drays, and other vehicles habitually used in the transportation of persons and articles from one part of the city to another, or in the transportation of coal, wood, stone, or lumber into the city; to establish stands for hackney-coaches, cabs, and omnibuses, and enforce the observance and use thereof; and to fix the rates and prices for the transportation of persons and property in such coaches, cabs, and omnibuses from one part of the city to another.

Power of coun-
cil as to drays,
wagons and
coaches.

[Chief of police and police officers may be given a fixed salary; see 17th G. A., ch. 56, inserted following § 550.]

INFIRMARY—HOUSE OF REFUGE—WORKHOUSE.

Infirmary for
the poor.
R. § 1111.

House of ref-
uge and cor-
rection: work-
house: who
may be con-
fined therein.
R. § 1112.

SEC. 538. The city council shall have power to establish and maintain an infirmary for the accommodation of the poor of the city, either within or without the limits of the city, and to provide for the distribution of out-door relief to the poor.

SEC. 539. The city council shall have power to establish and maintain, either within its limits or within the county in which it is situated, a house of refuge or a house of correction, and a workhouse, or either of them, and place the same under the management and control of such directors, superintendents, and other officers as the council may, by ordinance, provide. All children under the age of sixteen years, who shall be convicted of any offense made punishable by imprisonment under any ordinance

of the city, or who shall be liable to be committed to prison under any such ordinance, may be confined in such house of refuge, and may be there kept, or apprenticed out, under such rules as the directors of the house of refuge may prescribe, until they arrive at the age of eighteen years. Any person over the age of sixteen years convicted of the violation of any ordinance, and liable to be punished therefor by imprisonment, may, in lieu thereof, be committed to the house of correction, or to the workhouse, as may be provided by ordinance.

SEC. 540. The board of directors of any house of refuge established by any city, are authorized to appoint a committee of one or more of their own number, with power to execute and deliver, on behalf of said board, indentures of apprenticeship for any inmate of said institution whom they may deem a proper person for an apprenticeship to a trade or occupation, to such person as said committee or the board may select; and said indentures shall have the like force and effect as other indentures of apprenticeship under the laws of this state, and said indentures shall be filed and kept in said institution by the superintendent thereof, and it shall not be necessary to file the same in any other place or office.

SEC. 541. When any inmate of said institution shall have been apprenticed and proved untrustworthy and unreformed, he or she shall be re-committed to the said institution to be held in the same manner as before said apprenticeship.

SEC. 542. The city council shall have power to erect, establish, and maintain a city prison, which shall be in the keeping of the city marshal under such rules and regulations as the city council shall provide. They shall provide one or more watch or station houses; they shall also provide suitable rooms for holding police court; they shall provide, by ordinance, for the election by the qualified electors of the city, or for the appointment by the police judge, of a clerk of such police court, and for the selection, summoning, and empaneling its juries, and for all such matters touching said court as may tend to its efficiency, and the dispatch of business. No clerk of said court shall be in any way concerned as counsel or agent in the prosecution or defense of any person before such court.

SEC. 543. The police judge shall have, in all criminal cases, the powers and jurisdiction vested in justices of the peace; he shall also have power to take the acknowledgment of deeds and other writings, and shall have jurisdiction of all violations of the ordinances of the city. Every such police court shall be deemed a court of record, shall have a seal, to be provided by the city council, with the name of the state in the center, and the style of the court around the margin.

While exercising the powers and jurisdiction of justices of the peace juries may be necessary, (§ 4672) and under the preceding section the council may provide for empaneling them; but in the trial of offenses against an ordinance of the city, the defendant has no right to a trial by jury, nor a change of venue: Zelle

v. McHenry, 51-572.

Any change in this and the three following sections from the corresponding sections of the Revision (§§ 1117-1120) does not apply to cities under special charter, the powers, etc., of police judges in such cities being regulated by 13 G. A. ch. 12, which makes those sections the law govern-

Directors of:
may apprentice
inmates.
R. § 1113.

Liable to be re-
committed.
R. § 1115.

City prison:
watch house:
police court
and clerk.
R. § 1116.

Power and u-
risdiction of
police judge.
R. § 1117.
13 G. A. ch. 12.

ing such cities, although the sections | 482, 484.
are, as to other cities, repealed by | As to proceedings in police and
these sections: *Weir v. Allen*, 47- | city courts, see § 4707.

Fees of police
judge.
R. § 1118.
13 G. A. ch. 12.

SEC. 544. The police judge holding the police court shall be entitled to receive, in all criminal cases prosecuted in behalf of the state, the same fees, to be collected in the same manner, as a justice of the peace in like cases; and in cases prosecuted in behalf of the city, such fees, not exceeding those for services of the like nature in state prosecutions, as the council may, by ordinance, prescribe; and shall also receive such salary or compensation as the city council may, in like manner prescribe.

[Police judge may be given fixed salary in lieu of fees; see 17th G. A., ch. 56, inserted following § 550.]

*It seems that it would not be proper for the council to provide that the police judge should only have fees in cases where judgment should be rendered in favor of the city: *Crane v. City of Des Moines*, 47-105.*

Court always
open.
R. § 1119.
13 G. A. ch. 12.

SEC. 545. The police court shall always be open for the dispatch of business; and the jurors in said court shall have the qualifications of jurors in the district court.

Appeal.
R. § 1120.
13 G. A. ch. 12.

SEC. 546. An appeal may be taken from the police court, in like manner as from a justice of the peace, on the trial whereof the appellate court shall take judicial notice of the ordinances of the city.

Mayor to act as
police judge.
R. § 1121.

SEC. 547. Until a police judge shall be elected and qualified, the mayor of any such city shall have all the powers and jurisdiction of such judge, and shall hold the police court in such manner as required of the police judge, and shall be entitled to demand and receive the same fees and compensation as may be provided for the police judge or police court.

SUPERIOR COURTS.

[Sixteenth General Assembly, Chapter 143.]

What cities
may establish.

SEC. 1. Any city in this state containing five thousand inhabitants whether organized under a special charter or the general act for the incorporation of cities and towns, may establish a superior court as hereinafter provided, which, when established, shall take the place of the police court of such city.

Question of es-
tablishment to
be submitted
to vote.

SEC. 2. Upon the petition of one hundred citizens of any such city, the mayor by and with the consent of the common council, may at least ten days before an annual election for city officers, issue a proclamation submitting to the qualified voters of said city, the question of establishing said court. At the same election and every fourth year thereafter (if the said court is established), there shall be elected a judge of the superior court, the votes for whom shall be upon the same ballot with other city officers. Should two-thirds of all the votes cast at such election be in favor of said court, the same shall thereby be established, and the said judge shall qualify and hold his office for the term of four years, and until his successor is elected and qualified. Immediately after each election of said judge, the mayor of said city shall transmit a certificate of the election of said judge to the governor of the state,

who shall thereupon issue to him a commission empowering him to act as judge as herein provided.

SEC. 3. Said judge shall be a qualified elector of the city, and be possessed of the legal requirements prescribed in section two hundred and eight of the code of Iowa, and shall subscribe in writing the same oath required of judges of the district court and file the same with the mayor of the city, and shall give bond to the state of Iowa in the sum of four thousand dollars, for the faithful discharge of his duties, which bond must be filed with and approved by the mayor; and the effect of such election and qualification shall be to abolish the office of police judge of such city.

SEC. 4. In case of a vacancy occurring in the said office of Vacancy. judge the mayor, by and with the consent of the common council, shall appoint a judge, who shall hold the office until the next annual city election, and until his successor is elected and qualified, who shall be chosen to fill the unexpired time.

SEC. 5. Said judge shall hold at least one term of court in each month, except in August, commencing on the first Monday in each month, but as a police court it shall always be open for the dispatch of business.

SEC. 6. Said court shall have jurisdiction concurrent with the district and circuit courts, as now and hereafter provided by law, except where said courts respectively have exclusive jurisdiction, and except actions for divorce, and of all appeals and writs of error, in civil cases, from justice's courts, within the township or townships in which the city is located, and by consent of parties from justice's courts in other townships in the county, said appeals and writs of error, to be taken in the same time and manner as if the same were taken to the circuit court, and the exclusive original jurisdiction to try and determine all actions civil and criminal, for the violation of city ordinances, and all the jurisdiction conferred upon police courts as now and heretofore provided by law, and all the jurisdiction co-extensive and concurrent with justices of the peace, in all actions civil and criminal, as now are or may be hereafter provided by law, and for the trial of criminal actions, shall be open at such times and under such rules as the court shall prescribe.

SEC. 7. Changes of venue may be had from said court in all civil actions to the circuit court in the same manner, for like causes, and with the same effect, as the venue is now changed from the circuit court as provided by law. In criminal actions changes of venue may be had to the district court, as provided by law for changes of venue in the district court, and when criminal actions are tried in vacations, without jury, an appeal will lie to the district court, as provided by law for appeals in like cases from justices of the peace.

SEC. 8. The said judges shall have the same power in regard to injunctions, writs, orders and other proceedings, out of courts as are now or may be hereafter possessed, for [by] the judges of the district or circuit courts; and may also administer oaths, take acknowledgments and depositions (except depositions to be used in his own court,) and solemnize marriages. But he shall not practice in any of the courts of this state.

**Pleadings,
modes of trial,
rules of practice, etc.** SEC. 9. The superior court shall be a court of record, and all statutes in force respecting venue and commencement of actions, the jurisdiction, process, and practice of the circuit and district court, the pleadings and mode of trial of action at law or in equity, and the enforcement of its judgments by execution or otherwise, and the allowance and taxing of costs, and the making of rules for practice or otherwise, shall be deemed applicable to the superior court, except wherein the same may be inconsistent with the provisions of this act. The records and papers properly filed in a cause in either the district or circuit courts are equally evidence in said superior court.

Seal. SEC. 10. The said court shall have and use its own seal, having on the face thereof the words, "superior court," and the name of the city, county and state.

Clerk. SEC. 11. As long as the business of the court can be done with convenience and dispatch, without a clerk, the judge shall be the clerk of the said court. Whenever, from the accumulation of causes and other demands upon the court a clerk shall become necessary, the city recorder, or clerk, shall be the clerk of the superior court, and shall receive such compensation for his services as the city council may from time to time allow; and he shall perform the duties in said court provided by law for the clerk of the circuit court, and shall give bonds as required of the said judge.

Marshal. SEC. 12. The city marshal shall be the executive officer of said court and his duties and authority in court and in executing process shall correspond with those of the sheriff of the county in the circuit court, and with process from that court, and he shall receive the same fees and compensation as the sheriff for like services. But the process of said court may be also served by the sheriff.

**Compensation
of Judge.** SEC. 13. The judge of said court shall receive in full compensation for his services the sum of two thousand dollars per annum, to be paid to him quarterly; the first two quarters of the municipal year shall be paid from the city treasury, and the last two quarters from the county treasury wherein said city is located. The costs and fees of said court in civil actions shall be the same as in the circuit and district courts except herein otherwise provided, and the clerk of the superior court shall account for and pay over to the city all fees that may be paid into the said court, and also for all fines for the violation of city ordinances. Of all other fines he shall render the same account as is provided for justices of the peace. In actions for the violation of city ordinances, if unsuccessful, the city shall pay all costs, the same as provided by law for the county in other criminal actions prosecuted in the name and behalf of the state. The fees in criminal actions shall be the same as in justices courts, and shall be paid and accounted for as hereinbefore stated, and as otherwise provided by law for justices of the peace and their courts.

Costs. SEC. 14. Upon the first regular consecutive call of the calendar of causes by the court, either party to an action may elect to have such cause tried by jury, and a minute of said election shall be made upon the calendar. Causes thus designated shall be tried first in their order, and when a disposition shall have been

Fees.

Jury.

made of such causes the jury shall be discharged from further attendance at that term. No juror shall be detained as jurymen longer than one week, except upon a trial commenced within the first week of his attendance.

SEC. 15. In order to provide jurors for said court, the judge, Selection of mayor, and recorder shall immediately after qualifying and every three months thereafter, make out a list of twelve names of persons from the body of the county in which the city is situated, qualified to serve as jurors in the district court, which list shall be furnished to the clerk of said superior court, and from this list there shall be drawn by the clerk and marshal nine persons in the same manner as jurors are drawn in the district court, and a precept from the court shall issue accordingly five days before the first day of next term, as provided by law in like cases in the district court.

SEC. 16. The jury shall consist of six qualified jurors, unless a Number of jury of twelve is demanded, in which case the clerk may issue a special venire for that purpose, or the city marshal may complete the jury from the bystanders. (But no party shall be entitled to a jury of twelve, until the person demanding the same shall deposit with the clerk the sum of six dollars to be paid said jurors and taxed with the costs.) The pay of the regular jurors shall be fees, one dollar per day of six hours, and mileage as provided by law, to be taxed with the costs not exceeding twenty-five dollars in any one case; the rest of the jury fees to be paid by the city.

SEC. 17. All appeals from judgments or orders of said court Appeals. or the judge thereof in civil actions shall be taken to the supreme court in the same manner and under the same restriction, within the same time, and with the same effect as appeals are taken from the circuit to the supreme court except upon consent appeals shall be in same manner to the district court.

SEC. 18. Judgments in said court may be made liens upon Judgment real estate in the county in which the city is situated by proceeding liens. as provided in sections three thousand five hundred and sixty-seven and three thousand five hundred and sixty-eight of the code, relating to judgments of justice of the peace, and with equal effect and may be made liens upon real estate in other counties in the same manner as judgments in the circuit and district courts.

SEC. 19. It shall be the duty of the city attorney or solicitor City attorney. to file informations in the superior court for violation of city ordinances and prosecute the same, and for such services he shall receive such compensation as the city council shall allow.

SEC. 20. The said judge shall be ex-officio a magistrate and in Powers of preliminary examinations the proceedings and practice shall be judge ex-officio. the same as before any other magistrate, and all warrants issued in criminal proceedings under the seal of the court, may be used in any other part of the state without further attestation, in like manner as if issued by the district court, and parties may be committed to the city prison for confinement or punishment instead of the county jail.

[Seventeenth General Assembly, Chapter 22]

WHEREAS, Courts have been organized in this state under the Preamble provisions of chapter 143, of the laws of the sixteenth general assembly:

WHEREAS, Doubts have arisen as to the constitutionality of said courts on account of the provision in said act, submitting the same to the people:

Be it enacted by the General Assembly of the State of Iowa:

Courts organized under chapter 143, 16th G. A. legalized.

SECTION 1. That all courts heretofore organized in this state under the provisions of said chapter 143, and approved March 17, 1876, are hereby declared to be legal and valid, and the establishment and organization thereof, in pursuance of said act, and all doings, processes, judgments and proceedings in said courts, and the elections and commissions of the judges thereof are hereby legalized and declared to be lawful and valid to all intents and purposes as fully in all respects as if said act had been fully enacted and declared to be a law, without any submission to a vote of the people as provided in the second section of said act.

This act (16th G. A., ch. 143), held, not in conflict with Const. Art. 3, § 1, as providing for the exercise of legislative power by the people. It confers upon cities certain powers which

may be accepted and exercised by vote of the people, but the validity of the act of the legislature is not made dependent upon popular vote: *Lytle v. May*, 49-224.

AMENDMENT OF SPECIAL CHARTERS.

Mode of procedure. R. & 1141.

SEC. 548. On the presentation of a petition signed by one-fourth of the electors, as shown by the vote at the next preceding charter election, of any city or town acting under a special charter or act of incorporation, to the governing body thereof, asking that the question of the amendment of such special charter or act of incorporation be submitted to the electors of such city or town, such governing body shall, immediately, propose sections amendatory of said charter or act of incorporation, and submit the same, as requested, at the first ensuing charter election. At least ten days before such election, the mayor of such city or town shall issue his proclamation setting forth the nature and character of such amendment, and shall cause such proclamation to be published in a newspaper published therein; or, if there be none, he shall cause the same to be posted in five public places in such city or town. On the day specified, the amendment shall be submitted to the electors thereof for adoption or rejection, and the form of the ballots shall be "for the amendment," or "against the amendment."

This provision allowing cities to amend their charters, held, not in conflict with the constitution, Art. 3, sec. 30, forbidding local or special laws

for the incorporation of cities and towns: *Von Phul v. Hammer*, 29-222.

Same. R. & 1142.

SEC. 549. If a majority of the votes cast is in favor of said amendment, the mayor, or chief officer, shall issue his proclamation accordingly; and the said amendment shall thereafter constitute a part of said charter.

Same. R. & 1143.

SEC. 550. The legislative body of said city or town, may submit any amendment to the vote of the people as aforesaid at any special election; provided, one-half the electors as aforesaid petition for that purpose, and the proceedings shall be the same as at the general election.

COMPENSATION OF OFFICERS.

[Seventeenth General Assembly, Chapter 56.]

SEC. 1. All cities of the first class, organized under the general incorporation law, and all cities organized under special charter, may provide by ordinance that all judges of police courts or other city courts, city marshals, chiefs of police, police officers, and all other officers elected or appointed, shall receive, in lieu of all fees now allowed by law or ordinance, such fixed salary, in monthly or quarterly installments as may be provided by ordinance, when not provided by law, which salary, when it shall have been fixed, shall not be increased or diminished during their terms of office.

SEC. 2. No such officer of any such city shall receive, for his own use, any fees or other compensation for his services of such city, than that which shall be provided as contemplated in section one of this act; but all such fees as are now or may hereafter be allowed by law for such services, shall, by such officer, when collected, be paid into the city treasury, at such time and in such manner as may be prescribed by ordinance.

SEC. 3. All acts and parts of acts in conflict herewith are hereby repealed; *provided*, that the intent of this act is not to abolish any fees now allowed by law, but to require the same to be paid into the city treasury.

An ordinance changing the compensation of the officers named, from fees to salary, as contemplated by this act, cannot affect such as are in

office at the time of the passage of the act, during their terms of office. See § 491: *Bryan v. City of Des Moines*, 51-590.

DESTRUCTION OF PROPERTY TO STOP FIRE.

[Fifteenth General Assembly, Chapter 36.]

SEC. 1. Whenever, for the purpose of staying the progress of a conflagration, the authorities of any city or town, whether acting under special charter or not, shall order or cause to be destroyed any house or building not already on fire and adjoining or in the vicinity of such conflagration, the owner thereof shall be paid for such property by such city or town, *provided* he shall make his claim within thirty days from the date of the destruction of the same, and if said city or town shall fail to make payment, when such claim is made, and satisfactory proof furnished of the value of the said property so destroyed, the party owning such house or building shall have the right to recover, by suit in any court having jurisdiction of the same, the value of such property which such city or town authorities may have caused to be destroyed to prevent the spread of such conflagration.

SEC. 2. Upon the payment of the amount to which said party is entitled, by such city or town, as provided in section one of this act, the party so paid as aforesaid, shall assign and set over to said city or town all his right, title, and interest in and to any insurance policy, or any claim he may have against any insurance company, for said property so destroyed or any part thereof.

[This act was passed without having an enacting clause as required by Const. Art. 3, § 1.]

CITIES UNDER SPECIAL CHARTER.

Prior laws repealed: corporations acting under special charter not affected thereby.

SEC. 551. All acts and parts of acts passed subsequent to the fourth day of July, A. D. 1858, and prior to the taking effect of this code, relating to cities of the first and second class and incorporated towns, or to any or either of said classes of municipal corporations, and applicable, both to such corporations as are acting under special charter, and to such as are incorporated under the general act of which this chapter is an amendment, are repealed by the code only so far as they affect the latter, and not as they affect corporations acting under special charters. All rights, powers, privileges, duties, directions, and provisions whatever, contained in and enacted by such acts and parts of acts, shall remain in full force and effect so far as municipal corporations acting under special charters are concerned, and the provisions of this chapter shall not apply to any city or town incorporated prior to the eighteenth day of July, A. D. 1858, unless the same be adopted as hereinbefore provided.

[Acts subsequent to the code which affect only cities under special charters are omitted in this compilation, in conformity with the plan of the commissioners in framing the code.]

This section does not abrogate the last clause of § 431, making that section applicable to cities acting under special charters: *City of Burlington v. Leebbrick*, 49-252. Applied: *City of Keokuk v. Dressell*, 47-597, 599.

CHAPTER 11.

OF GENERAL REGULATIONS AFFECTING COUNTIES, TOWNS, AND CITIES.

Sectarian schools: no public money to be given to.
14 G. A. chs. 57, 134.

Cannot take stock in banks or railways.
H. & 1345.

SECTION 552. Public money shall not be appropriated, given, or loaned by the corporate authorities, supervisors, or trustees of any county, township, city, or town, or municipal organization of this state, to, or in favor of, any institution, school, association or object, which is under ecclesiastical or sectarian management or control.

SEC. 553. No county, city, or incorporated town in this state, shall, in their corporate capacity, or by their officers, directly or indirectly, subscribe for stock, or become interested as a partner, shareholder, or otherwise, in any banking institution, whether the same be a bank of issue, deposit, or exchange, nor in any plank road, turnpike, or railway, or in any other work of internal improvement; nor shall they be allowed to issue any bonds, bills of credit, scrip, or other evidences of indebtedness for any such purposes—all such evidences of indebtedness for said purposes being hereby declared absolutely void; *provided, nevertheless*, that this section shall not be so construed as to prevent, or in any wise to embarrass, the counties, cities, or towns, or any of them, in the

erection of their necessary public buildings, bridges, laying off highways, streets, alleys, and public grounds, or other local works in which said counties, cities, or towns may respectively be interested.

[The acts in relation to voting taxes in aid of railways are inserted following § 1323.]

SEC. 554. All bonds or other evidences of debt, hereafter issued by any corporation to any railway company as capital stock shall be null and void, and no assignment of the same shall give them any validity. Bonds void.
R. & 1346.

SEC. 555. In all actions now pending or hereafter brought in any court in this state, on any bond or coupon issued, or purporting to be issued, by any county, city, or incorporated town for railway purposes, a former recovery against such corporation on any one or more, or any part of such bonds or coupons, shall not bar or estop any defense such corporation has made, or can make to such bonds or coupons in the action in which such former recovery was had; but the corporation sought to be charged in any such action now pending or hereafter brought, may allege and prove any matter of defense in such action to the same extent, and with the same effect, as though no former action had been brought or former recovery had. Recovery on
coupons no bar
in another ac-
tion.
Ex. S. 9 G. A.
Ch. 34.

SEC. 556. No officer of any county or other municipal corporation, or any deputy or employe of such officer shall, either directly or indirectly, be permitted to take, purchase, or receive in payment, exchange, or in any way whatever, any warrant, scrip, or other evidence of the indebtedness of such corporation, or any demand against the same, for a less amount than that expressed on the face of the warrant, scrip, or other evidence of indebtedness or demand. Officers cannot
purchase war-
rants at dis-
count.
R. & 2186.

SEC. 557. The treasurer of every county, or other municipal corporation, when he shall receive any warrant, scrip, or other evidence of indebtedness of such corporation, shall endorse thereon the date of its receipt, from whom received, and what amount. Duty of treas-
urer.
R. & 2187.

SEC. 558. Any officer of any county or other municipal corporation, or any deputy or employe of such officer, who violates any of the provisions of this chapter, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than one hundred dollars, and not more than five hundred dollars for each offense. Penalty.
R. & 2188.

[17th G. A., ch. 58, as to bonds of counties, cities and towns, is inserted after § 293.]

CHAPTER 12.

OF PLATS.

SEC. 559. Every original owner or proprietor of any tract or parcel of land, who has heretofore subdivided, or shall hereafter subdivide the same into three or more parts for the purpose of Lands laid out
in town or city

Reference to known monuments to be made. laying out any town or city, or any addition thereto or any part thereof, or suburban lots, shall cause a plat of such subdivision, with references to known or permanent monuments, to be made, which shall accurately describe all the subdivisions of such tract or parcel of land, numbering the same by progressive numbers, and giving the dimensions and length and breadth thereof, and the breadth and courses of all the streets and alleys established therein. Descriptions of lots or parcels of land in such subdivisions, according to the number and designation thereof on said plat contained, in conveyances or for the purposes of taxation, shall be deemed good and valid for all intents and purposes. The

Description.

Duty to record. duty to file for record a plat as provided herein, shall attach as a covenant of warranty in all conveyances of any part or parcel of such subdivision by the original owner or proprietors against any and all assessments, costs, and damages paid, lost, or incurred by any grantee, or person claiming under him, in consequence of the omission on the part of said owner or proprietor to file such plat.

Statement on plat to contain statement that it is made with the free consent of owners. SEC. 560. Every such plat shall contain a statement, to the effect that the above or foregoing subdivision of (here insert a correct description of the land or parcel subdivided), as appears on this plat, is with the free consent and in accordance with the desire of the undersigned owners and proprietors, which shall be signed by the owners and proprietors, and shall be duly acknowledged before some officer authorized to take the acknowledgment of deeds; and when thus executed and acknowledged, said plat shall be filed for record and recorded in the office of the recorder of the proper county.

Acknowledgment and record.
13 G. A. ch. 77

A proprietor laying off an addition to an incorporated town or city, though he may grant only the use of, or easement in the streets, or reserve minerals therein, (*City of Dubuque v. Benson*, 23-248), cannot confer upon some other public corporation rights in and control over the streets and alleys; therefore held, that the entry upon a plat that the proprietors "do hereby

convey to Polk Co. for the use of the public, the streets and alleys as marked on this plat, and dedicate the same to the public," was inoperative, and the plating, acknowledgment, recording, etc., being sufficient to constitute a statutory dedication, the fee of the streets vested in the city: *City of Des Moines v. Hall*, 24-24.

Acknowledgment and recording equivalent to deed.
R. § 1021.
C. § 51, § 561,
637.

SEC. 561. The acknowledgment and recording of such plat, is equivalent to a deed in fee simple of such portion of the premises platted as is on such plat set apart for streets or other public use; or as is thereon dedicated to charitable, religious, or educational purposes.

RIGHTS ACQUIRED BY THE CITY: The title to land dedicated for streets, public squares, etc., is in the city, being in trust for the public, and such property cannot be taken on execution against the city, or for any other than trust purposes: *Ransom v. Boal*, 29-68.

The purchaser of city or town property acquires no ownership of or interest in the streets adjoining such property other than that which is given to the whole public,—the right of way over them; and he cannot object

to the construction of a railroad over such streets on the ground that compensation for the right of way is not made to him: *Milburn v. City of Cedar Rapids*, 12-246; and the city may authorize the construction of a railroad through the streets. Such use is not inconsistent with the purpose for which they were originally dedicated, and does not constitute a public nuisance: *Id.*

The fee of the streets is in the city for the use of the general public, not the people of the city alone, and the legis-

lature may authorize them to be used by a railroad company for the construction of its road without the consent of the city and without compensation: *City of Clinton v. C. R. & M. R. R. Co.*, 24-455. But a city has no authority to control or grant rights and privileges to, or in, its streets, unless it has been so authorized: *Stanley v. City of Davenport*, 54-463; and as to the right of railway companies to construct their tracks upon the streets of cities, see notes to § 464.

The city acquires as against adjoining owners and the original proprietor control over the whole street and not simply over the surface; and it may maintain an action for material, as coal, etc., removed therefrom, whether such material be superficial or subterraneous: *City of Des Moines v. Hall*, 24-234.

The nature of the property which a city acquires in its streets is different from that which it may have in real estate, such as it is authorized to acquire for other purposes: *City of Clinton v. C. R. & M. R. R. Co.*, 24-455.

An adjacent property owner cannot excavate areas under the sidewalk,

except with the consent of the city authorities: *Daris v. City of Clinton*, 50-585.

AS TO DEDICATION: Marking a square on the plat as "garden square" held not necessarily to express or imply a dedication to the public: *City of Pella v. Scholte*, 24-233.

Grounds dedicated to the public can only be used for the purposes expressed, but it does not follow that the title reverts to the grantor on the failure to use the lands for the purposes indicated. The dedication passes the fee without any right of reversion, but any person injuriously affected by a diversion from the uses designated, may prevent the same by injunction: *Pettingill v. Devin*, 35-344, 355.

The occupation by a party dedicating, for ten years thereafter, will not bar the rights of the public, unless it appear that he held under claim of right adverse to the public: *McDunn v. City of Des Moines*, 34-467; *Livermore v. City of Maquoketa*, 35-358.

Purchasers of lots in the portion platted acquire a right of way over the streets and allies therein: *Yost v. Leonard*, 34-9.

SEC. 562. Streets and alleys so platted and laid out, or which have been platted or laid out under any prior law of this state regulating private plats, may be altered or vacated in the manner provided by law for the alteration or discontinuance of highways.

Upon the vacation of the streets in a plat the title of the land occupied by them does not revert to the grant-

Streets may be altered after the manner for highways.
R. § 1029.

tor: *Day v. Schroeder*, 46-546; *Pettingill v. Devin*, 35-344, 355.

SEC. 563. Any such plat may be vacated by the proprietors thereof, at any time before the sale of any lot therein, by a written instrument declaring the same to be vacated, duly executed acknowledged, or proved and recorded in the same office with the plat to be vacated; and the execution and recording of such writing shall operate to destroy the force and effect of the recording of the plat so vacated, and to divest all public rights in the streets, alleys, commons, and public grounds laid out or described in such plat. And in cases where any lots have been sold, the plat may be vacated, as herein provided, by all the owners of lots in such plat joining in the execution of the writing aforesaid.

Plat may be vacated.
9 G. A. ch. 78, § 1.

SEC. 564. Any part of a plat may be vacated under the provisions and subject to the conditions of this chapter, provided such vacating does not abridge or destroy any of the rights and privileges of other proprietors in said plat, and provided further, that nothing contained in this section shall authorize the closing or obstructing of any public highways laid out according to law.

Not vacated when it affects the rights of others.
Same, § 2.

SEC. 565. When any part of a plat shall be vacated as aforesaid, the proprietors of the lots so vacated may enclose the streets, alleys, and public grounds adjoining said lots in equal proportions.

Streets enclosed.
Same, § 2.

SEC. 566. The county recorder, in whose office the plats aforesaid are recorded, shall write in plain, legible letters across that part of said plat so vacated, the word "vacated," and also make a reference on the same to the volume and page in which the said instrument of vacation is recorded.

Plats vacated may be replatted and conveyed accordingly. **Same, § 5.** **SEC. 567.** The owner of any lots in a plat so vacated, may cause the same and a proportionate part of adjacent streets and public grounds to be platted and numbered by the county surveyor; and when such plat is acknowledged by such owner, and is recorded in the record office of the county, such lots may be conveyed and assessed by the numbers given them on such plat.

Plat to be made and recorded: by whom. **SEC. 568.** Whenever the original owner or proprietor of any subdivision of land, as contemplated in section five hundred and fifty-nine of this chapter, have sold or conveyed any part thereof, or invested the public with any rights therein, and have failed and neglected to execute and file for record a plat as provided in section five hundred and fifty-nine of this chapter, the county auditor shall notify some, or all, of such owners and proprietors by mail or otherwise, and demand the execution of said plat as provided; and if such owners or proprietors, whether so notified or not, fail and neglect to execute and file for record said plat for thirty days after the issuance of such notice, the auditor shall cause to be made the plat of such subdivision and any surveying necessary therefor. Said plat shall be signed and acknowledged by the auditor, who shall certify that he executed it by reason of the failure of the owners or proprietors named to do so, and filed for record; and, when so filed for record, shall have the same effect for all purposes as if executed, acknowledged, and recorded by the owners or proprietors themselves. A correct statement of the costs and expenses of such plat, surveying, and recording, verified by oath, shall be by the auditor laid before the first session of the board of supervisors, who shall allow the same, and order the same to be paid out of the county treasury, and who shall, at the same time, assess the said amount, pro rata, upon all the several subdivisions of said tract, lot, or parcel so subdivided; and said assessment shall be collected with and in like manner as the general taxes, and shall go to the general county fund; or said board may direct suit to be brought in the name of the county before any court having jurisdiction, to recover of the said original owners or proprietors, or either of them, the said cost and expense of procuring and recording said plat.

Auditor to notify owner on his failure to plat. **Auditor to cause plat to be made.** **Filed for record.** **Effect of.** **Costs and expenses.** **Assessed proportionately and collected as other taxes.** **Suit may be brought.** **When subdivisions of land are not described by metes and bounds, auditor may cause plat to be made.** **How to proceed.** **SEC. 569.** Whenever any congressional subdivision of land of forty acres or less, or any lot or subdivision is owned by two or more persons in severalty, and the description of one or more of the different parts or parcels thereof cannot, in the judgment of the county auditor, be made sufficiently certain and accurate, for the purposes of assessment and taxation without noting the metes and bounds of the same, the auditor shall require and cause to be made and recorded, a plat of such tract or lot of land with its several subdivisions in accordance with the provisions of this chapter; and he shall proceed in such cases according to the provisions of section five hundred and sixty-eight, and all the provisions of said section in relation to plats of towns, cities and so

forth, shall govern as to the tracts and parcels of land in this section referred to.

SEC. 570. Every conveyance of land in this state, shall be deemed to be a warranty that the description therein contained is sufficiently definite and accurate to enable the auditor to enter the same on the plat book required by law to be kept; and when there is presented to be entered on the transfer book, any conveyance in which the description is not, in the opinion of the auditor, sufficiently definite and accurate, he shall note said fact on said deed with that of the entry for transfer, and shall notify the person presenting the same that the land therein not sufficiently described must be platted within thirty days thereafter. Any person aggrieved by the opinion of the auditor, may, within said thirty days, appeal therefrom to the board of supervisors, by claiming said appeal in writing, and thereupon no further proceeding shall be taken by the auditor, and at their next session the board of supervisors shall determine said question and direct whether or not said plat shall be executed and filed and within what time; and if the grantor in such conveyance shall neglect for thirty days thereafter to file for record a plat of said land and of the appropriate congressional subdivision in which the same is found, duly executed and acknowledged as required by the auditor, or in case of appeal as directed by the board of supervisors, then the auditor shall proceed as is provided in section five hundred and sixty-eight of this chapter, and cause such plat to be made and recorded, and thereupon the same proceedings shall be had and rights shall accrue, and remedies had, as are in said section provided. Such plat shall describe said tract of land and any other subdivisions of the smallest congressional subdivision of which the same is part, numbering them by progressive numbers, setting forth the courses and distances, and number of acres, and such other memoranda as are usual and proper; and descriptions of such lots or subdivisions according to the number and designation thereof on said plat shall be deemed good and sufficient for all purposes of conveyancing and taxation.

SEC. 571. None of the provisions of this chapter shall be construed to require replatting in any case where plats have been made and recorded in pursuance of any law heretofore in force; and all plats heretofore filed for record, and not subsequently vacated, are hereby declared valid, notwithstanding irregularities and omissions in the manner or form of acknowledgment or judge's certificate; but the provisions of this section shall not affect any action or proceeding now pending.

SEC. 572. Any person who shall dispose of or offer for sale, or lease any lots in any town, or addition to any town or city, until the plat thereof has been duly acknowledged and recorded as provided in this chapter, shall forfeit and pay fifty dollars for each lot and part of lot sold or disposed of, leased, or offered for sale.

As this section only imposes a penalty on the person selling and not on one buying lots, the plat of which is not acknowledged and recorded, the vendee may enforce against the vendor a contract for the sale of such lots, and as to such vendee the con-

tract will not be void: *Watrous v. Blair*, 32-58. The contract of sale is not illegal; the vendor may recover the consideration of the sale, and the vendee may enforce specific performance thereof: *Pungborn v. Westlake*, 6-346.

Plat: what to contain.

Plats heretofore made legal.

Suits pending not affected.

Penalty where plats have not been made.
R. & 1027.

CITY AND TOWN LOTS.

[Eighteenth General Assembly, Chapter 53.]

Certificate of record, that land is unnumbered.

SEC. 1. Whenever any person or corporation shall lay out any parcel of land into town or city lots in accordance with chapter 12, title IV, of the code, such person shall procure from the treasurer of the county in which the land lies a certified statement that the land thus laid out into lots, streets and alleys is free from taxes, and shall also procure a certified statement from the recorder of such county, that the title in fee to said land is in such proprietor and that the same is free from every incumbrance which certified statements shall both be filed with the recorder before the plat of said town or city lots shall be admitted to record or of any validity; *provided*, however, that if the parcel of land so laid out shall be

Incumbrances.

incumbered with a debt certain in amount, and which will fall due not more than two years after the making of the affidavit herein-after provided for, and which the creditor will not accept with accrued interest to the day of proffered payment, if it draws interest, or with a rebate of interest at the rate of six per centum per annum if it draws no interest, or if the creditor cannot be found, then such proprietor, and if a corporation its proper officer or agent, may file with the recorder of such county his affidavit, stating either that such proprietor has offered to pay such creditor the full amount of his debt, with interest or with a rebate of interest, as the case may be, and that such creditor would not accept the same, or that such creditor cannot be found, whereupon such proprietor may execute a bond double the amount of such incumbrance with three sureties who shall be freeholders of the county, to be approved by the recorder and clerk of the county, which bond shall run to the county, and shall be for the benefit of the purchasers of any of such town or city lots, and shall be conditioned for the payment of such incumbrance and the cancellation thereof of record as soon as practicable after the same becomes due and for the holding of all such purchasers and those claiming under them forever harmless from such incumbrance, and when such affidavit and bond shall have been filed with the recorder, together with a certificate of the treasurer that said land is free from taxes, and the certificate of the recorder, that the title in fee to said land is in such proprietor, and that the same is free from all incumbrance except that secured by said bond, said plat shall be admitted to record, and be equally valid as if such proprietor had filed with the recorder the certificate of such recorder that said land was free from all incumbrance.

Certificates, affidavits, and bonds recorded.

SEC. 2. All the certificates, affidavits and bonds provided for in the preceding section shall be recorded in connection with the plat to which they relate in the office of the recorder before the said plat or the record thereof shall be of any validity.

Bearings and distances.

SEC. 3. The record and plat of every town or city, or addition thereto, which may be thus laid out shall give the bearing and distance from some corner of a lot or block in said town or city or part thereof, to some corner of the congressional division of which said town, city or addition is a part.

SEC. 4. The provisions of this act shall not prevent the annexation of contiguous territory to cities and towns under sections four hundred and twenty-six, four hundred and twenty-seven, four hundred and twenty-eight and four hundred and twenty-nine of chapter ten, title four of the code, and chapter forty-seven of the laws of the sixteenth general assembly, as amended by chapter one hundred and sixty-nine of the laws of the seventeenth general assembly.

Not to affect provisions as to annexation of contiguous territory.

SEC. 5. Chapter twenty-five of the laws of the fifteenth general assembly, and chapter sixty-three of the laws of the sixteenth general assembly are hereby repealed.

Repealing clause.

RESURVEY OF TOWN PLATS.

[Fifteenth General Assembly, Chapter 54.]

SEC. 1. In all cases where the original town plat of any city, town, or village, of this state, or any of the additions to any such city, town, or village, shall have been heretofore or may hereafter be lost, mislaid, or destroyed after the sale and conveyance of any subdivision, block, or lot thereof, by the original owner or proprietor, to any person or persons, before the same shall have been recorded, it shall be lawful for any three persons interested in such city, town, village, or addition thereto, to have such original city, town, village, or addition to any such city, town, or village resurveyed and replatted, and such plat made a matter of record, as hereinafter set forth; *provided*, that in no case shall such replat be made a matter of record without the consent in writing, indorsed thereon, of the original owner or proprietor of such city, town, village, or addition thereto, if he be alive and his residence known to those who desire such replat recorded.

Where any town plat is lost, same may be resurveyed.

Record.

Proviso: consent of original owner.

SEC. 2. The county surveyor of any county of this state in which is situate any such city, town, village, or addition thereto as contemplated in section one of this act, is hereby authorized, empowered, and, upon payment to him of his legal fees by the persons interested, required to resurvey any such city, town, village, or addition thereto, and shall make out a plat of such city, town, village, or addition so resurveyed, which plat shall in all respects, as near as possible, conform to the original lines of said city, town, village, or any addition thereto, that may be resurveyed, and it shall in all respects be made out as required by section 559 of the code. And in order to the perfect completion of such resurvey and plat, the said surveyor is empowered and authorized to subpoena witnesses, administer oaths, and to take evidence touching said original plat, lines, subdivisions of said city, town, village, or addition thereto sought to be surveyed and replatted; also as to whether the original proprietor be dead or living, and touching all things necessary to enable him to accurately establish the lines and boundaries of the said city, town, village, or addition thereto, and the various subdivisions thereof: *provided*, that in all cases, before any such resurvey shall be made, the county surveyor of the proper county shall give four weeks' notice of in some newspaper published in the county, if there be any, of such contemplated resurvey, and, in case there is no such paper published in

Code: § 559.

Subpoena witnesses and may take evidence.

Proviso: notice to be given.

the county, then by posting up four written notices in four of the most public places in the county, one of which shall be in said district proposed to be resurveyed.

SEC. 3. When the surveyor shall have completed said plat, as hereinbefore contemplated, he shall attach his certificate thereto, to the effect that said plat is a just, true, and accurate plat of said city, town, village, or addition so surveyed by him; and the said plat and certificate thereto shall be filed for record in the office of the recorder of deeds of the proper county, and from the date of such filing it shall be regarded and treated, in all courts of law and equity in this state, as though the same had been made by the original owners or proprietors of said lands so resurveyed and replatted: *provided*, that any person or persons deeming themselves aggrieved by said resurvey or replatting may at any time, within six months from the date of filing said plat for record, commence action by bill in chancery in the circuit or district court against the persons employing the surveyor as aforesaid and setting up their causes of complaint, and asking that said record be canceled.

Plat to be filed with county recorder.

Effect of filing.

Provision for persons aggrieved.

Bill in chancery.

Trial and determination of cause.

Dismissal of bill.

Cancellation of plat.

SEC. 4. If it shall appear on the trial of said cause that the said city, town, village, or addition thereto was originally laid out and platted, that the original owner or proprietor had sold any or all of the lots of such city, town, village, or addition, or that he intended to dedicate to the public the streets, alleys, or public squares of such city, town, village or addition, that the plat thereof had never been recorded, but was lost or mislaid, that the owner or proprietor is dead, or his residence unknown, and that the resurvey and replat so filed for record is a substantially accurate survey and plat of the original plat of such city, town, village, or addition thereto, then the said bill shall be dismissed at the costs of the complainants; otherwise the court shall set aside said replat and cancel the same of record at the costs of defendants.

VACATION OF TOWN PLATS.

[Fifteenth General Assembly, Chapter 61.]

Plats may be vacated.

Petition by all the owners.

Notice of same

Newspaper publication.

SEC. 1. Whenever the owners of any piece of land, not less than forty acres in amount, which has been platted into town lots, and the plat of which has been recorded, shall desire to vacate said plat or part of plat, it may be done in manner following: A petition signed by all the owners of the town or part of the town to be vacated shall be filed in the clerk's office of the district court of the district in which the land so platted lies, and notice of such petition shall be given, at least four weeks before the meeting of the court, by posting notices in three conspicuous places in the town where the vacation is prayed for, and one upon the court house door of the county. At the term of court next following the filing of petition and notice, the court shall fix a time for hearing the petition, and notice of the day so fixed upon shall be given by the clerk of the court in some newspaper published in the county at least one week before the day appointed for the hearing. At the hearing of the petition, if it shall appear that all the owners of lots in the town or part of

town to be vacated desire the vacation, and that there is no valid Decree. objection thereto, a decree shall be entered vacating such portion of the town, and the streets, alleys, and avenues therein, and for all purposes of assessments such portion of the town shall be as *it [if]* it had never been platted into lots; *provided, however,* that, if any street as laid out on the plat shall be needed for the public use, it shall be excepted from the order of vacation, and shall remain a public highway; *and further provided,* that this act shall not affect cities of the first and second class.

Proviso; street
may be ex-
cepted.
Not to affect
cities.

TITLE V.

OF ELECTIONS AND OFFICES.

CHAPTER 1.

OF THE ELECTION OF OFFICERS, AND THEIR TERMS.

General election.
R. § 459.
C. 51, § 237.

SECTION 573. The general election for state, county, district, and township officers shall be held throughout the state on the second Tuesday of October in each year, except the years of the presidential election, when it shall be held on the Tuesday next after the first Monday of November.

See Const. Art. 3, § 3.

Special election.
R. § 460.

SEC. 574. Special elections authorized by any law, or held to supply vacancies in any office to be filled by the vote of the qualified voters of the entire state, or of any district, county, or township, may be held at the time designated by such law, or by the officer authorized to order such election.

Vacancies: how supplied.
R. § 461.

SEC. 575. All vacancies in office created by the expiration of a full term, shall be supplied at the general election next preceding the time of expiration.

Term of office.
R. § 462.

SEC. 576. The term of office of all officers except highway supervisors, chosen at a general election for a full term, shall commence on the first Monday of January next thereafter, except when otherwise provided by the constitution. The term of office of highway supervisors shall commence fifteen days after the date of the general election. The term of an officer chosen to fill a vacancy shall commence as soon as he has qualified therefor.

[Repealed and re enacted with the addition of the provisions as to highway supervisors. 16th G. A., ch. 72.]

See Const. Art. 4, § 15.

Proclamation by governor.
R. § 463.

SEC. 577. At least thirty days before any general election, the governor shall issue his proclamation designating all the offices to be filled by the vote of all the electors of the state, or by those of any congressional, legislative, or judicial district, and transmit a copy thereof to the sheriff of each county.

Sheriff to give notice.
R. § 463.

SEC. 578. The sheriff shall give at least ten days notice thereof, by causing a copy of such proclamation to be published in some newspaper printed in the county; or, if there be no such paper, by posting such a copy in at least five of the most public places in the county.

SEC. 579. A similar proclamation shall be issued before any special election ordered by the governor, designating the time at which such special election shall be held, and the sheriff of each county in which such election is to be held, shall give notice thereof as above provided.

SEC. 580. The governor, lieutenant-governor, and superintendent of public instruction, shall be chosen at the general election in each odd-numbered year.

In odd-numbered years
R. § 46.
10 G. A. ch. 52, § 2.

See Const. Art. 4, § 15.

SEC. 581. The secretary of state, auditor of state, treasurer of state, register of state land office, and attorney-general, shall be chosen at the general election in each even-numbered year, and their term of office shall be two years.

As to secretary, auditor and treasurer, see Const. Art. 5, § 22. As to attorney general see Const. Art. 5, § 12.

SEC. 582. One judge of the supreme court shall be chosen at the general election in each odd-numbered year, and a judge of said court shall also be chosen at the general election in the year 1876, and each sixth year thereafter.

Judges supreme court.
R. § 467.
10 G. A. ch. 23, §§ 1, 8.

[By 16th G. A., ch. 7, it was provided that an additional judge of the supreme court should be elected at the general election in 1878, and every six years thereafter.]

See Const. Art. 5, §§ 3, 11.

SEC. 583. The clerk and reporter of the supreme court shall be chosen at the general election in the year 1874, and each fourth year thereafter, and their terms of office shall be four years.

Clerk and reporter of supreme court.
10 G. A. ch. 22, § 1.

SEC. 584. A district judge and a district attorney shall be chosen in each judicial district, except the twelfth and thirteenth, and the general election in the year 1874, and each fourth year thereafter.

District judge and attorney.
R. § 468.

See Const. Art. 5, §§ 5, 11, 13.

SEC. 585. District judges and district attorneys in the twelfth and thirteenth districts, shall be chosen at the general election in the year 1876, and each fourth year thereafter.

Same.
10 G. A. ch. 98, § 18.
14 G. A. ch. 61, § 5.

SEC. 586. A circuit judge shall be chosen in each judicial district at the general election in the year 1876, and every fourth year thereafter, and his term of office shall be four years, and shall commence on the first day of January next after his election.

Circuit judges.
12 G. A. ch. 86, § 1.
14 G. A. ch. 22, §§ 1, 2.

SEC. 587. Members of the house of representatives shall be chosen by the qualified voters of the respective representative districts in each odd-numbered year.

Representatives.
R. § 470.

See Const. Art. 3, § 3.

SEC. 588. Senators in the general assembly, to succeed those whose term of office is about to expire, shall be chosen by the qualified voters of the respective senatorial districts in each odd-numbered year, for the term of four years.

Senators.
R. § 471.

See Const. Art. 3, § 5.

SEC. 589. Each county shall elect at the general election in each even-numbered year, a clerk of the district and circuit

County officers. courts, and a recorder of deeds; and in each odd-numbered year, R. § 224, 472,
473.
C. '51, § 96.
9 G. A. ch. 172,
§ 62. an auditor, a treasurer, a sheriff, a coroner, a county superintendent, and a surveyor; and each of said officers shall hold his office for the term of two years.

10 G. A. ch. 100; [Women made eligible to the office of county superintendent, see 16th G. ch. 129, § 8.4.
12 G. A. ch. 180, A., ch. 136, inserted following § 1720; also to the office of county recorder, § 1. see 18th G. A. ch. 40, inserted following § 336.]

SEC. 590. Two justices of the peace and two constables shall be chosen by the qualified voters of each township at the general election of each even-numbered year, and shall hold their offices for the term of two years.

[SEC. 591, as to the election of township trustees, township clerk, assessor and highway supervisor is superseded by the following acts.]

[Seventeenth General Assembly, Chapter 12.]

Township trustees. SEC. 1. There shall be three trustees elected in each township, who shall hold their office for the term of three years, except as hereinaster provided.

SEC. 2. At the general election in 1878 there shall be elected in each township of the state, three trustees, one of whom shall hold his office for one year, one for two years, and one for three years, their respective terms to be determined by lot by the board of canvassers of said township; and annually thereafter there shall be one trustee elected, who shall continue in office for three years and until his successor is elected and qualified.

Repealing clause. SEC. 3. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

[Eighteenth General Assembly, Chapter 161.]

Township clerk, assessor, highway supervisor. SEC. 1. At the general election in the year 1880, and biennially thereafter, there shall be elected in each civil township of the state by the qualified electors thereof in the manner prescribed by law, one township clerk, one assessor, and one highway supervisor for each highway district, who shall hold their offices for the term of two years and until their successors are elected and qualified.

Repealing clause. SEC. 2. All acts and parts of acts inconsistent herewith are hereby repealed.

[The title of this act is "An act to further amend section 391, chapter one, title five of the code relating to the election of township officers." The number of the section is evidently a mistake. There is no such section in chapter 1, title 5, and the subject matter shows that § 591 is the section intended.]

SEC. 592. One or two additional justices of the peace, and one or two additional constables may be elected in each township if the trustees so direct, by posting up notices of the same in three of the most public places in the township, at least ten days before election.

SEC. 593. Justices of the peace and constables shall be considered as county officers under the provisions of this title, but they shall be voted for by the voters of their respective townships.
R. § 478.
C. 51. 2243.

CHAPTER 2.

OF THE REGISTRATION OF VOTERS.

SECTION 594. At every annual assessment the township assessor shall record in a separate book, the full name and residence of every resident of the township who is, or will become, a qualified elector previous to the next general election; and shall deliver said list, properly certified, to the township clerk, on or before the first day of July in each year.

As to who are qualified electors, see **I** Const. Art. 2.

SEC. 595. The township trustees and clerk shall constitute the board of registry, and shall meet, annually, on the first Monday in September, at nine o'clock A. M., and make a list of all qualified electors in their township, which shall be known as the register of elections.

SEC. 596. The register of elections shall contain the names at full length, alphabetically arranged, with the residence set opposite. It shall be made from the assessor's list and the poll books of the previous election, and shall be kept by the township clerk, and shall at all times be open to inspection at his office without charge. He shall, also, within two days after the adjournment of the board, post up a certified copy thereof in a conspicuous place in his office, or in such other place as the board may direct.

SEC. 597. The board of registry shall hold a meeting at the place where the last general election was held, or if from any cause it cannot be held at such place, then at some place to be designated by notice published in at least one paper printed in the township, or posted in at least three public places therein, on the Tuesday preceding the general election of each year, at which they shall revise, correct, and complete the register of elections, and shall hear any evidence that may be brought before them in reference to such correction. Their session shall be from nine o'clock A. M., till 5 P. M., and from day to day thereafter until they shall deem the register properly completed. The names of all persons not qualified as electors shall be stricken from the register, and any person appearing to register his name may be challenged by any elector or member of the board, and, in case of such challenge, shall be examined on oath touching his qualifications as an elector, which examination may, in the discretion of the board be reduced to writing; and if it shall appear upon such examination that the person is entitled to be registered, in the opinion of the board, or if, after such examination, the said person will take an oath that he is, or will be at the election for which the register is made, a legal voter stating the ward, district, or township in which he resides, and complying in other respects with the oath now administered to an elector in case of his being challenged, then the board shall cause the name of said person to be registered. But no name shall be added to the register within five days next before the election.

SEC. 598. The board of registry may appoint a clerk in the absence of the township clerk, and may administer oaths in all cases coming before them for action.

Board appoint

clerk

I 2 G. A. ch. 171.

I 7.

Clerk of cities
and incorporated towns to
prepare regis-
ter.
12 G. A. ch 171,
§ 5.

Board of
registry.

Special elec-
tions.
Same, § 14.

Board in new
townships.
13 G. A. ch. 174,
§ 4.
14 G. A. ch. 53,
§ 6

When not ap-
plicable.

SEC. 599. In corporation elections, the clerk of the city or town shall prepare from the poll-books of the last preceding annual election of said corporation, an alphabetical register of the electors as provided in section five hundred and ninety-six of this chapter, showing the residence of each person by number of dwelling, if there be a number, and the name of the street or other location of the dwelling place of each person. And he shall post up one copy thereof in each ward at the place where the last preceding election was held, one month preceding each election, and furnish the original to the board of registry at their next meeting. The board of registry for said cities and towns shall consist of the mayor, assessor, clerk, and marshal, who shall meet for the purpose of correcting the registry one week before each election, at the usual place of meeting of the city council or trustees, and, after having corrected the registry of voters in each ward as contemplated in the general provisions of this chapter, said board shall cause a certified copy of said registry for each ward to be delivered to the election board of such ward at or before the time of opening the polls. After the canvassing of the votes, the registries shall be attached to the poll-books and filed in the office of the clerk of the city or town for the use of the succeeding board of registry. The general provisions of this chapter shall extend to incorporated towns and cities as far as the same may be applicable. But no residence in such cities or towns shall be deemed sufficiently stated, unless the street or other location, and number, if any, are specified in the list.

SEC. 600. In cases of special elections, the township clerk shall furnish a certified copy of the corrected registry for the last preceding general election, and the same shall be corrected and completed at a meeting of the board of registry of each township, held on the Tuesday preceding the special election at the usual place in the manner hereinbefore provided.

SEC. 601. When a new township has been formed, by division or otherwise, the persons appointed to act as judges and clerks of the first election in such new township shall also constitute the board of registry therein; and the clerks of the township or townships from which the territory of the new township has been taken, shall furnish to such board a list of the registered legal voters residing in such territory.

SEC. 602. This chapter shall not apply to townships, incorporated towns, or cities, having a population of less than six thousand inhabitants as shown by the last preceding census.

CHAPTER 3.

OF THE GENERAL ELECTION.

Election pre-
cincts.
R. § 490.
C. § 245.
9 G. A. ch. 23,
§ 11.
14 G. A. ch. 86.

SECTION 603. At the general elections, each township shall be an election precinct, and a poll shall be opened at the place of election therein. But the board of supervisors may, in their judgment, divide any township in their county into two or more precincts.

SEC. 604. In that case they shall number or name the several Numbered and precincts and cause the boundaries of each to be recorded in their recorded. minute book, and notice thereof to be published in some news- 9 G. A. ch. 23, paper of general circulation in the county for three consecutive weeks at least once a week, the last publication to be made at least thirty days before the next election.

SEC. 605. No person shall vote in any other precinct than that Place of vot^h in which he resides at the time. Same, § 7.

By going into a township and remaining there for the sole purpose of voting, with no intention of remaining longer, one will not acquire suffi- cient residence to entitle him to vote; but if the removal is in good faith, no length of residence is necessary: *The State v. Minnick*, 15-123.

SEC. 606. There shall be three judges of election in each pre- cinct, who shall be appointed by the board of supervisors at their meeting in September; and there shall be two clerks of the election, one of whom shall be the township clerk, and the other some elector named by him, and if the township clerk does not attend, then the two clerks shall be chosen by the judges of election; provided, that the township trustees and township clerks shall be judges and clerks of election in those precincts where they respectively reside.

SEC. 607. If any judge does not attend in time, or refuses to be sworn, his place shall be filled by an elector appointed by those who do attend; and if no judge is present at the time for opening the polls, the electors present shall choose three qualified persons to act as judges of election.

SEC. 608. If the clerks, or either of them, are not present at the opening of the polls, or, being present, refuse to be sworn, the judges of election shall fill their places from the electors present.

SEC. 609. Before opening the polls each of the judges and clerks shall take the following oath: I, A. B., do solemnly swear Oath. that I will impartially, and to the best of my knowledge and ability, perform the duties of judge (or clerk) of this election, and will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

These provisions are directory. A failure of the officers mentioned to be sworn, will not vitiate the election, and in a case in court involving the validity of an election, the fact that the officers were sworn may be proved *aliunde*. The return is not conclusive: *Dishon v. Smith*, 10-212.

SEC. 610. Any one of the judges or clerks present may administer the oath to the others, and it shall be entered in the poll books, subscribed by the person taking it, and certified by the officer administering it.

SEC. 611. The polls shall be opened at nine o'clock in the forenoon, unless vacancies shall have to be filled as above, in which case they are to be opened as soon thereafter as may be, and they shall be kept open until six o'clock in the afternoon; and if the judges deem it necessary for receiving the ballots of all the electors, they may keep them open until nine o'clock in the evening. Proclamation thereof shall be made at or before the opening of the polls, and half an hour before closing them.

Order: preservation of.
R. § 487.
C. '51, § 252.

Same.
R. § 488.
C. '51, § 253.

Boxes.
R. § 489.
C. '51, § 254.

Poll books.
R. § 490.
C. '51, § 255.
12 G. A. ch. 171,
§ 1, 9.

Ballots.
R. § 491.
C. '51, § 256.

Voting.
R. § 492.
C. '51, § 257.

Check register:
vote rejected:
affidavit filed:
12 G. A. ch. 171,
§ 8
13 G. A. ch. 174,
unless he shall furnish the judges his affidavit, showing that he is
a qualified elector, and a sufficient reason for not appearing before
the board on the day for correcting the register, and also shall
prove by the affidavit of one freeholder or householder, whose
name is on the register, that such affiant knows him to be a resi-
dent of that election-precinct, giving his residence by street and
number if in a city or incorporated town, as the same is in such
case required to appear on the register. Said affidavits shall be
kept by the judges and by them filed in the office of the township
clerk, and all such affidavits may be administered by either of the
judges or clerks of the election.

The provision requiring the registry
of voters is not in conflict with Const.
Art. 2, § 1, prescribing the qualifica-
tion of electors: *Edmunds v. Banbury*,
28-267.

Challenge.
R. § 493.
C. '51, § 258.
13 G. A. ch. 174,
§ 8.

SEC. 612. Any constable of the township who may be designated by the judges of election is directed to attend at the place of election, and he is authorized and required to preserve order and peace at and about the same; and if no constable be in attendance, the judges of the election may appoint one or more specially, by writing, who shall have all the powers of a regular constable.

SEC. 613. If any person conducts in a noisy, riotous or tumultuous manner at or about the polls so as to disturb the election, or insults or abuses the judges or clerks of election, the constable may forthwith arrest him and bring him before the judges, and they, by a warrant under their hands, may commit him to the jail of the county for a term not exceeding twenty-four hours; but they shall permit him to vote.

SEC. 614. The board of supervisors shall provide for each precinct in the county, for the purpose of elections, one box with lock and key.

SEC. 615. The county auditor shall prepare and furnish to each precinct two poll books, having each of them a sufficient column for the names of the voters, a column for the number, and sufficient blank leaves to contain the entries of the oaths, certificates, and returns; and also all books, blanks, and materials necessary to carry out the provisions of the chapter on registration of voters.

SEC. 616. The ballots shall designate the office for which the persons therein named are voted for.

SEC. 617. In voting, the electors shall deliver their ballots to one of the judges, and he shall deposit them in the bal'ot-box.

SEC. 618. The judges, in election-precincts where the registry law is in force, shall designate one of their number to check on the register the name of every person voting; and no vote shall be received from any person whose name does not appear there, unless he shall furnish the judges his affidavit, showing that he is a qualified elector, and a sufficient reason for not appearing before the board on the day for correcting the register, and also shall prove by the affidavit of one freeholder or householder, whose name is on the register, that such affiant knows him to be a resident of that election-precinct, giving his residence by street and number if in a city or incorporated town, as the same is in such case required to appear on the register. Said affidavits shall be kept by the judges and by them filed in the office of the township clerk, and all such affidavits may be administered by either of the judges or clerks of the election.

An election held without registry, where such is required by law is void. The provisions of the law are mandatory and imperative: *Nefzger v. D. & St. P. R. Co.*, 36-642.

SEC. 619. Any person offering to vote, whether his name be on the register or not, may be challenged as unqualified by any judge or elector; and it is the duty of each of the judges to challenge any person offering to vote whom he knows or suspects not to be duly qualified.

SEC. 620. When any person is so challenged, the judges shall ^{Oath.}
 explain to him the qualifications of an elector, and may examine ^{R. § 494.}
 him as to his qualifications, and if the person insists that he is ^{C. '51, § 259.}
 qualified, and the challenge is not withdrawn, one of the judges
 shall tender to him the following oath: "You do solemnly swear
 that you are a citizen of the United States, that you are a resident
 of this precinct, that you are twenty-one years of age as you verily
 believe, that you have been a resident of this county sixty days,
 and of this state six months next preceding this election, and that
 you have not voted at this election." And if he takes such oath
 his vote shall be received.

SEC. 621. The name of each person, when his ballot is received, ^{Name entered}
 shall be entered by each of the clerks in the poll book kept by ^{on poll book.}
 him, so that there may be a double list of voters. ^{R. § 495.}
^{C. '51, § 260.}

ELECTION OF ROAD SUPERVISOR AND TOWNSHIP ASSESSOR.

[Seventeenth General Assembly, Chapter 71.]

SEC. 1. No person shall vote for supervisor of highways of any ^{Code, title 5,}
 highway district other than that in which he resides at the time of ^{chapter 3}
 election, nor shall any person living in a city or incorporated ^{amended.}
 town, which constitutes a part of a township, and which has a ^{Who may}
 porate assessor, vote for a township assessor. ^{vote for.}

SEC. 2. The township trustees of each township or election- ^{Manner of}
 precinct, shall cause to be prepared a separate ballot-box to re- ^{election of}
 ceive the votes for supervisors of highways, with as many different ^{Road supervi-}
 compartments as there are highway districts in the township, or ^{sors.}
 election precincts, and numbered accordingly, and each person
 voting shall at the time he gives in his vote for supervisor of high-
 ways, which shall be on a separate ballot, state to the judges of
 election the number of the highway district in which he resides,
 and his vote shall be placed in the corresponding compartment of
 said ballot-box.

SEC. 3. Where any township or election precinct embraces ^{Election of}
 the whole or any part of any city or incorporated town having a ^{township as-}
 corporate assessor, a separate ballot-box for township assessor
 shall be prepared by the township trustees, and a vote for town-
 ship assessor shall be in such township on a separate ballot, and ^{separate bal-}
 every person voting for such officer, shall, at the time, if required, ^{lot box shall}
 prove to the judges of election that he resides outside of the lim- ^{be used for.}
 its of such city or incorporated town, and his vote for such officer
 shall be placed in the ballot-box made for that purpose.

CANVASS BY JUDGES OF ELECTION.

SEC. 622. When the poll is closed, the judges shall proceed to ^{Canvass.}
 canvass and ascertain the result of the election. ^{R. § 496.}
^{C. '51, § 261.}

SEC. 623. The canvass shall be public, and shall commence by ^{Same.}
 a comparison of the poll lists from the beginning, and a correction ^{R. § 497.}
 of any errors which may be found therein until they agree. If ^{C. '51, § 262.}
 two or more ballots are found so folded together as to convince
 the judges that they were cast as one, they shall not be counted,
 but they shall have the words "rejected as double" written upon
 them, be folded together again, and kept as herein directed.

Ballot rejected. SEC. 624. If, at any stage of the canvass, a ballot, not stating for what office the person therein named is voted for, is found in the box when officers of different kinds are to be elected, it is to be rejected.
 R. § 499.
 C. '51, § 264.

Same. SEC. 625. If a ballot be found containing the names of more persons for an office than can be elected to that office, and such ballot form an excess above the number voting, it shall be rejected as to that office, the cause of rejection being endorsed thereon, and disposed of as hereafter directed; and if it does not form such excess, so many of the names first in order as are required shall be counted.
 R. § 500.
 C. '51, § 265.

Tally list. SEC. 626. As a check in counting, each clerk shall keep a tally list.
 R. § 501.
 C. '51, § 266.

Effect of excess of ballot. SEC. 627. If the ballots for any officer are found to exceed the number of the voters in the poll lists, that fact shall be certified with the number of the excess, in the return, and if it be found that the vote of the precinct where the error occurred would change the result in relation to a county officer, if the person elected were deprived of so many votes, then the election shall be set aside as to him in the precinct where such excess occurs and a new election ordered therein, providing that no person or persons residing in another precinct at the time of the general election shall be allowed to vote at such special election; but if the error occur in relation to a township officer, the trustees may order a new election or not, in their discretion. If the error be in relation to a district or state officer, the error and the number of the excess are to be certified to the state canvassers, and if it be found that the error would affect the result as above, a new vote shall be ordered in the precinct where the error happened, and the canvass be suspended until such new vote is taken and returned. When there is a tie vote and such an excess, there shall be a new election as above directed.
 R. § 498.
 C. '51, § 268.
 14 G. A. ch. 12.

Return made on each poll book.
 R. § 502.
 C. '51, § 267.

SEC. 628. A return in writing shall be made in each poll-book, setting forth in words written at length, the whole number of ballots cast for each officer, except those rejected, the name of each person voted for, and the number of votes given to each person for each different office, which return shall be certified as correct, signed by the judges, and attested by the clerks. Such return shall be substantially as follows:

At an election at the house of , in township, or in precinct of township, in county, state of Iowa, on the day of A. D. there were ballots cast for the office of (governor) of which

A B had votes.

C D had votes.

(and in the same manner for any other officer.)

A TRUE RETURN, L M , }
 N O , } Judges of the election.
 P Q , }

ATTEST, R S , }
 T U , } Clerks of election.

It is not fatal to the certificate that it does not contain full particulars of time and place. The caption and the certificate may be taken together: *Dishon v. Smith*, 10-212.

While the canvassers cannot adju-

dicate upon the sufficiency of returns, where the case comes into a court of justice, the court or jury trying it may go behind the returns and even behind the ballot-box in some cases: *Ibid.*

SEC. 629. One of the poll books containing such return, with the register of election attached thereto, in cases where such register is required by law shall be delivered to the township clerk, and be by him filed in his office. The other poll book, with its return, shall be enclosed, sealed, superscribed, and delivered by one of the judges of election within two days to the county auditor, who shall file the same in his office.

[The words between "thereto" in the second line and "shall" in the third line as they stand in the original are omitted in the printed code.]

SEC. 630. When the result of the election is ascertained, the judges shall cause all the ballots, including those rejected, with the tally list, to be placed in some convenient condition for preservation and deposited with the township clerk, who is to keep them until the time is passed which is allowed for contesting the election of any officer voted for.

SEC. 631. In townships constituting a single precinct, the judges of the election shall certify the result as to township officers immediately after the canvass above directed; but where there are two or more precincts in a township, the trustees and clerk thereof shall meet on the day after the election, and canvass the votes given for township officers as shown by the returns from the precincts.

SEC. 632. When there is a tie between two persons for a township office, the clerk shall notify them to appear at his office at a given time to determine the same by lot before one of the trustees and the clerk, and the certificate of election is to be given accordingly. If either party fail to appear or to take part in the lot, the clerk shall draw for him.

SEC. 633. The ballots for township officers having been canvassed, the clerk shall, within five days thereafter post up in three public places in the township written notices containing the names of persons elected to township offices at such election, and requiring each of them to appear before the proper officer and qualify according to law.

COUNTY CANVASS.

SEC. 634. If the returns from all the precincts are not made to the county auditor by the third day after the election, on the fourth day he shall send messengers to obtain them from those precincts whose returns are wanting, the expenses of which shall be paid out of the county treasury.

SEC. 635. At their meeting on the Monday after the general election, at twelve o'clock noon, the board of supervisors shall open and canvass the returns and make abstracts, stating in words written at length the number of ballots cast in the county for each office, the name of each person voted for, and the number of votes given to each person for each different office.

Disposition of poll books.
R. § 333, 503.
C. '51, § 268.
9 G. A. ch. 23,
§ 6.
12 G. A. ch. 171,
§ 11.
14 G. A. ch. 74.

Disposition of
ballots and
tally lists.

R. § 504.
C. '51, § 269.

Disposition of
ballots and
tally lists.

R. § 504.
C. '51, § 269.

Result of can-
vass as to town-
ship officers to
be certified.

Tie vote for
township
office.
R. § 547.
C. '51, § 316.

Clerk to notify
township offi-
cers elect.
R. § 548.
C. '51, § 317.

9 G. A. ch. 89.

Supervisors to
canvass: time:
make abstracts:
R. §§ 333, 506.
C. '51, § 271.

The action of the board in canvassing returns is ministerial rather than judicial. Nor is there any discretion to be exercised. The board has no authority to judge of the validity of returns or of votes. Its duty is to receive the returns and count them, provided they are sufficiently proved to be such, although irregular. (So held in regard to the canvass of votes at special election as to the re-location of a county seat under 5 G. A., ch. 46); *The State v. County Judge, etc.*, 7-186; *The State v. Bai-*

ley, id., 390.

The canvassers may reject improper returns, such as are not properly signed, or have not been in the proper custody, or have been mutilated or changed; and after they have declared the result they may, by mandamus, be compelled to re-assemble and re-canvass the vote to correct a mistake in improperly rejecting returns: *Price v. Harned*, 1-473; or in counting improper returns: *The State v. County Judge, etc.*, 13-139.

Form of abstracts.
R. § 507.
C. § 51, § 272.
14 G. A. ch. 22,
§ 1, 2.

SEC. 636. The abstract of the votes for each of the following classes shall be made on a different sheet:

1. Governor and lieutenant-governor;
2. All state officers not otherwise provided for;
3. Representatives in congress;
4. Senators and representatives in the general assembly from the county alone;
5. Senators and representatives in the general assembly by districts comprising more than one county;
6. Judges of the district court, district attorneys, and judges of the circuit court;
7. County officers.

SEC. 637. Two abstracts of all the votes cast for any state or judicial district officer shall be made, and one forwarded to the secretary of state, and the other filed by the county auditor.

SEC. 638. The person having the greatest number of votes for any office is to be declared elected.

Mandamus is the proper remedy to compel the canvassers to declare the party receiving the highest number of votes: *Bradfield v. Wart*, 36-elect and certify to the election of 291.

Declare who elected.
R. § 509.
C. § 51, § 275.

SEC. 639. Each abstract of the votes for such officers as the county alone elects, shall contain a declaration of whom the canvassers determine to be elected, except when two or more persons receive an equal and the greatest number of votes.

See note to preceding section.

Returns filed:
abstracts recorded.
R. §§ 335, 510.
C. § 51, § 276.

SEC. 640. When the canvass is concluded, the board shall deliver the original returns to the auditor to be filed in his office, and shall cause each of the abstracts mentioned in the preceding section to be recorded in a book to be kept for recording the result of county elections, and to be called the "election book."

Certificate.
R. §§ 511, 514.
C. § 51, § 277.
14 G. A. ch. 36.

SEC. 641. When any person thus elected has appeared and given bond, and taken the oath of office as directed in this title, there shall be delivered him a certificate of election, under the official seal of the county, in substance as follows:

STATE OF IOWA,
..... COUNTY. }

At an election holden in said county on day of, A. D.,, A. B. was elected to the office of of the said county, for the term of two years from the first Monday of January, A. D., (or if he was elected to fill a vacancy, say for the residue of

the term ending on the day of, A. D.,,) and until his successor is elected and qualified, and he has qualified by giving bond and taking the oath of office as required by law.

[L. S.]

A. B.

President of the board of canvassers.

WITNESS: E. F., county auditor.

Which certificate shall be presumptive evidence of his election and qualification.

SEC. 642. The certificates of senators and representatives in the general assembly may vary from the foregoing according to the nature of the case, and the requirements of law, and shall be made out in duplicate, one copy to be forwarded to the secretary of state, and the other to be delivered to the member on request.

SEC. 643. When two or more persons receive an equal and the highest number of votes for an office to be filled by the county alone, the auditor shall issue a notice to such persons of such tie vote and require them to appear at his office on a day named in the notice, within twenty days from the election day, and determine by lot which of them is to be declared elected.

SEC. 644. The county auditor shall notify the board of canvassers, or, in case of their absence or inability, the recorder and sheriff, of such lot and on the day fixed, the parties interested, or such of them as may appear, shall determine, by a lot fairly arranged by the three officers, which of them is to be declared elected; and the three officers shall certify such lot and its result under their official names and the seal of the county, to be affixed by the county auditor, and the certificate shall be recorded in the election book, and the auditor shall deliver to the person elected his certificate of election on the terms prescribed in this chapter.

SEC. 645. Within ten days after the election day, the county auditor shall envelope and seal up by itself, one of the abstracts of votes for governor and lieutenant-governor, and endorse upon it in substance "abstract of votes for governor and lieutenant-governor, from——county," and address it to the speaker of the house of representatives. The abstract of votes for other state officers, and for such district officers as are to be returned to the secretary's office, are to be enveloped, sealed, and indorsed in like manner, and directed to the secretary of state. The several packages shall then be placed in one envelope and transmitted to the secretary by mail.

SEC. 646. When a senator or representative in the general assembly is elected by a district composed of more than one county, the board of county canvassers shall, at the time of canvassing the vote of the county, make and certify an abstract of the votes cast in their county for such office, similar to the abstract required by section six hundred and thirty-six of this chapter, and the auditor shall seal up, direct, and transmit such abstract to the secretary of state as provided in section six hundred and forty-five of this chapter. He shall also transmit a similar abstract to the county auditor of each other county in the district, who shall file the same in his office.

SEC. 647. The board of state canvassers shall open the abstracts transmitted to the secretary of state, as provided by the last section, and canvass the votes therein returned at the time of

Duty of state
canvassers.
Same, § 3.

canvassing the state vote, or at such other time as they may fix, and in all cases at least twenty days prior to the time fixed by law for the meeting of the next general assembly; and in case of a special election, within five days after the receipt of such abstracts, and shall immediately make out, certify, and transmit by mail to the county auditor of each county in such district, to be by him filed in his office, an abstract of such canvass similar to the abstract required by section six hundred and forty-five of this chapter.

SEC. 648. They shall, also, make and sign a certificate showing who is elected to the office of senator or representative in such district, designating it by its number and similar to the certificate required by section six hundred and fifty-five of this chapter, and the secretary of state shall deliver it to the person appearing by it to be elected to such office on his demanding it.

STATE CANVASS.

SEC. 649. If the abstracts from any county are not received at the office of the secretary of state by the fourth Monday after the day of election, the secretary is authorized to send a messenger to the auditor of such county, who shall furnish such messenger with the abstracts, or, if they have been sent, with a copy of them, and he shall return them to the secretary without delay.

SEC. 650. The abstracts, when received by the secretary, shall be kept in his office unopened until the day appointed for opening them, and shall be opened only in the presence of the board of canvassers.

SEC. 651. The executive council constitute a board of canvassers for the state, but no member thereof shall take part in canvassing the votes for any office, for which he himself is a candidate.

SEC. 652. On the Thursday following the fourth Monday after the day of election, the board of state canvassers shall open and examine the returns if they are received from all the counties, and if not all received, they may adjourn, not exceeding twenty days, for the purpose of obtaining the returns from all the counties, and when these are received shall proceed with the canvass.

SEC. 653. They shall make an abstract stating the number of ballots cast for each office, the names of all the persons voted for, for what office they respectively received the votes, and the number of votes each received, in words at length, and stating whom they declare to be elected to each office; which abstract shall be signed by the canvassers in their official capacity, and as state canvassers, and have the seal of the state affixed.

[The word "each" in the fifth line, as it stands in the original, is "the" in the printed code.]

SEC. 654. The secretary shall record the abstract in a book to be kept by him for recording the result of state elections, and to be called the election book, and also file the abstract.

SEC. 655. A certificate shall be prepared for each person elected, in substance as follows :

Make certificate.
Same, § 24.

Returns: messenger sent.
R. § 519.
C. '51, § 285.

Abstracts opened.
R. § 520.
C. '51, § 286.

Who constitutes.
R. § 521.
C. '51, § 287.

Time of.
R. § 522.
C. '51, § 288.

Make abstracts.
I., § 523.
C. '51, § 289.

Record of canvass.
R. § 524.
C. '51, § 290.
Certificate.
R. § 525.
C. '51, § 291.

STATE OF IOWA.

At an election holden on the day of A. B. was elected to the office of of said state, for the term of years from the first Monday, (or day, as the case may be) of January, A. D., (or, if to fill a vacancy, say, for the residue of the term ending on the day of A. D.)

Given at Des Moines, this day of A. D.

Which certificate shall be signed by the governor, if present, if not by the secretary, with the seal of the state affixed in either case, and be attested by the other canvassers, but in the absence of the governor the secretary's certificate shall be signed by the auditor.

SEC. 656. Such certificate shall be delivered to the person ^{Same.}
elected when he has qualified as provided in chapter five of this <sup>R. § 526.
C. '51, § 292.</sup> title.

SEC. 657. The governor shall cause the persons elected to be ^{Notice.}
notified thereof immediately, either by mail or by a sheriff or constable, who shall return his doings to the secretary's office. <sup>R. § 527.
C. '51, § 293.</sup>

SEC. 658. The certificate of the election of a representative <sup>Representative
in congress.</sup>
in congress shall be signed by the governor, with the seal of the <sup>R. § 528.
C. '51, § 294.</sup> state affixed, and be countersigned by the secretary of state, and the governor shall cause it to be delivered to the person elected.

CHAPTER 4.**OF ELECTORS OF PRESIDENT AND VICE-PRESIDENT.**

SECTION. 659. On the Tuesday next after the first Monday in ^{Election of.}
the month of November, in the year eighteen hundred and sev- <sup>R. § 535.
C. '51, § 301.</sup>enty-six, and every four years thereafter, or on such days as the congress of the United States may direct, a poll shall be opened in each precinct for the election of electors of president and vice-president of the United States.

See U. S. Const. Art. II, § 1.

SEC. 660. The names of all the electors to be chosen shall be ^{Ballots.}
written or printed on each ballot, and each ballot shall contain the <sup>R. § 536.
C. '51, § 302.</sup> name of at least one inhabitant of each congressional district into which the state may be divided, and against the name of each person shall be designated the number of the congressional district to which he belongs.

[As amended, allowing names on ballot to be printed, 16th G. A., ch. 23.]

SEC. 661. This election shall be conducted, and the returns ^{Conducted.}
made, as directed in relation to the election of state officers and <sup>R. § 537.
C. '51, § 303.</sup> representatives in congress, except as herein otherwise expressed.

SEC. 662. The board of county canvassers shall examine the <sup>Duty of county
canvassers &c.</sup> returns, make, sign, envelope, and seal up the abstracts, and endorse and direct them as provided in other cases, and the county auditor shall transmit them to the secretary of state by mail. In

case of his failure so to do, or if they are not received by the secretary of state within fifteen days after the election, he may send a special messenger for them as in other cases.

Time of state
canvass.
R. § 540.
C. '51, § 306.

Same.
R. § 51.
C. '51, § 307.

Certificate.
R. § 542.
C. '51, § 308.

Time of meet-
ing, vacancies.
R. 543.
C. '51, § 309.

Notice.
R. § 544.
C. '51, § 310.
Election.
R. § 545.
C. '51, § 311.

Compensation.
R. § 546.
C. '51, § 312.

SEC. 663. On the twentieth day after the day of election, or before that time, if the returns are received from all the counties, the board of state canvassers shall open and examine the returns and make an abstract as directed in regard to the general elections, which shall be recorded by the secretary in the election book.

SEC. 664. The canvass shall be public, and in canvassing the returns, the persons having the greatest number of votes are to be declared elected; and if more than the requisite number of persons are found to have the greatest and an equal number of votes, the election of one of them shall be determined by lot, to be drawn by the governor in the presence of the other canvassers.

[The word "an," as it stands in the original, and here before "equal" in the fourth line, is omitted in the printed code.]

SEC. 665. The governor shall issue a certificate of election under his hand and the seal of the state, and cause it to be served on each person elected, notifying him to attend at the seat of government at noon of the Tuesday preceding the first Wednesday of December next after his election, and report himself to the governor as in attendance.

SEC. 666. The electors so attending shall meet at noon of the said Tuesday, and the governor shall provide them a list of all the electors, and in case of the absence of any elector, or, if the proper number of electors shall for any cause be deficient, those present shall forthwith elect from the citizens of the state so many persons as will supply the deficiency.

SEC. 667. Such choice being certified to the governor, he shall cause the person chosen to be notified immediately.

SEC. 668. The college of electors being full, shall meet at the capitol at noon of the said first Wednesday of December, and proceed to the election in conformity with the constitution of the United States.

SEC. 669. The electors shall receive a compensation of five dollars for every day's attendance, and the same mileage as members of the general assembly.

CHAPTER 5.

OF QUALIFICATION FOR OFFICE.

SECTION 670. No civil officer shall enter on the duties of his office until he has qualified himself as required in this chapter.

Must qualify.
R. § 549.
C. '51, § 319.

See Const., Art. 11, § 5.

SEC. 671. The governor and lieutenant-governor, by taking an oath in the presence of the general assembly in convention assembled, administered by a judge of the supreme court, to the effect that he will support the constitution of the United States

Governor and
lieutenant-gov-
ernor.
R. § 550.
C. '51, § 320.

and the constitution of the state of Iowa, and will faithfully, impartially, and to the best of his knowledge and ability, discharge the duties incumbent upon him as governor, or lieutenant-governor, of this state.

SEC. 672. Members of the general assembly, by taking the oath prescribed for them in the third article of the constitution.

SEC. 673. The judges of the supreme, district, and circuit courts, by taking and subscribing an oath in writing to the effect that they will support the constitution of the United States and that of the state of Iowa, and that, without fear, favor, affection, or hope of reward, they will, to the best of their knowledge and ability, administer justice according to the law equally to the rich and the poor, and, unless elected by the people, shall be commissioned by the governor.

SEC. 674. County supervisors and township trustees, with the officers already named in this chapter, are not required to give bond: form of bond. All other civil officers elected by the people, with those specified hereafter in this chapter, are required to give bond with a condition in substance as follows:

That as (naming the office) in township, county (or state of Iowa) he will render a true account of his office and of his doings therein to the proper authority when required thereby or by law; that he will promptly pay over to the person or officer entitled thereto, all money which may come into his hands by virtue of his office; that he will promptly account for all balances of money remaining in his hands at the termination of his office; that he will exercise all reasonable diligence and care in the preservation and lawful disposal of all money, books, papers, securities, or other property appertaining to his said office, and deliver them to his successor or to any other person authorized to receive the same; and that he will faithfully and impartially, without fear, favor, fraud or oppression, discharge all duties now or hereafter required of his office by law.

The county treasurer is only held to a reasonable degree of care and diligence, and if notwithstanding such care, moneys of the county are stolen from him, he is not liable: *Ross v. Hatch*, 5-149.

But where a county treasurer deposits the county funds in a bank, by the failure of which they were lost, held, that he was liable therefor, although no suitable place was in fact provided by the county for keeping the funds: *Lowry v. Polk Co.*, 51-50.

Sureties on the county treasurer's bond are only liable for any default occurring during the time for which

he is elected. If he hold over after such term until his successor is qualified, or if he be re-elected but fail to qualify anew, they are not liable: *County of Wapello v. Bigham*, 10-39.

The sureties of a sheriff are liable for trespass committed by him in attempting to discharge the duties of his office: *Charles v. Haskins*, 11-329.

A constable and sureties held liable, on his official bond, for damages resulting from an unauthorized sale by him of property exempt from execution: *Strunk v. Ockeltree*, 11-158.

SEC. 675. Every civil officer who is required to give bond, shall take and subscribe on the back of his bond, or on a paper attached thereto, to be certified by the officer administering it, an oath that he will support the constitution of the United States and that of the state of Iowa, and that to the best of his knowledge and ability he will perform all the duties of the office of (naming it) as provided by the condition of his bond within written.

Members of
general assem-
bly.
R. § 551.
C. '51, § 321.

Judges.
R. § 552.
C. '51, § 322.
9 G. A. ch. 172,
§ 76.

Oath.
R. § 561.
C. '51, § 331.

Same.
R. § 562.
C. 51, § 332.

SEC. 676. The oath of office provided by article eleven of the constitution for all civil officers not otherwise expressly provided for, may be substantially in the following form: I,....., do solemnly swear that I will support the constitution of the United States and the constitution of the state of Iowa, and that I will faithfully and impartially, to the best of my ability, discharge all the duties of the office of..... (naming it) in (naming the township, county, district, or state, as the case may be), as now or hereafter required by law.

Bonds.
R. § 555.
C. 51, § 325.

SEC. 677. The bonds of state and district officers shall be given to the state, those of county and township officers to the county.

Whether the State can maintain an action on the county treasurer's bond, *quere: The State v. Henderson*, 40-242.

The members of the board of supervisors are not liable for damages resulting from the approval of insufficient bond, when their action results from an honest mistake or error of judgment, whether of law or fact, but they are personally liable for neglect, carelessness and official misconduct in such matters: *Wasson v. Mitchell*, 18-153.

Same.
R. §§ 128, 135,
165, 377, 556, 557.
C. 51, §§ 326, 7,
10 G. A. ch. 22,
§ 21, ch. 52, § 3;
ch. 129, § 5.
12 G. A. ch. 160,
§ 4.

SEC. 678. The bond of the secretary of state shall be in the penal sum of not less than five thousand dollars.

Of the auditor of state, in the sum of not less than ten thousand dollars.

Of the treasurer of state, in the sum of not less than three hundred thousand dollars.

Of the state printer, in the sum of not less than five thousand dollars.

Of the state binder, in the sum of not less than two thousand dollars.

Of the attorney-general, in the sum of not less than ten thousand dollars.

Of the register of the state land office, in the sum of not less than five thousand dollars.

Of the reporter of the supreme court, in the sum of not less than ten thousand dollars.

Of the clerk of the supreme court, in the sum of not less than ten thousand dollars.

Of each district attorney, in the sum of not less than ten thousand dollars.

Of the superintendent of public instruction, in the sum of not less than two thousand dollars.

The bonds of county treasurers, clerks of the district and circuit courts, county recorders, coroners, county surveyors, township assessors, auditors, county superintendents, sheriffs, and of justices of the peace and constables, shall each be in a penal sum to be fixed by the board of supervisors; but those of the treasurer, clerks of the district and circuit courts, auditors, and sheriffs, shall not be in a less sum than five thousand dollars each, and those of justices and constables, not less than five hundred dollars each.

Number of
sureties.
R. § 135, 165,
556, 559.
C. 51, §§ 328-9.

SEC. 679. Every official bond shall be given with at least two sureties, and all sureties shall be freeholders within the state; the bonds of the state printer and binder shall be given with at least three sureties, and those of the treasurer of state and each county treasurer with at least four sureties.

SEC. 680. The bonds of state officers must be approved by the governor before being filed; those of district attorneys, by the district judges of their respective districts; those of county officers and township clerk, by the board of supervisors, and of township officers, by the township clerk. The approval shall in all cases be endorsed upon the bond and signed by the officer approving, or the president of the board. But in case the board of supervisors should decide that a bond which is to be approved by them is insufficient, or such bond is not approved the first day of the session, then a reasonable time, not to exceed five days, is to be allowed the officer elect to supply a sufficient bond, or to approve the same.

Approval of bonds.
R. § 377, § 60.
C. '51, § 330.
Ex. S. 9 G. A.
ch. 27, § 2.

SEC. 681. If the board of supervisors refuse or neglect to approve the bond of any county officer elect, he may present the same for approval to the judge of the circuit court, who shall fix a day for the hearing. Notice of such hearing shall be served upon the board of supervisors as provided by law for the service of original notice; and due proof of such service being made to the judge at the time fixed, he shall, unless good cause for postponement be shown, proceed to hear and determine the sufficiency of the bond; and, if satisfied that the same is sufficient, he shall approve the same, and such approval shall have the same force and effect as an approval by the board of supervisors at the time the same was presented to them for approval, would have had.

Same.
14 G. A. ch. 18.

SEC. 682. The bonds and oaths of state officers shall be filed in the office of the secretary of state, except those of the secretary, which shall be filed and recorded in the office of the auditor; those of county and township officers in the county auditor's office, except those of the county auditor, which shall be kept in the county treasurer's office, and those of justices of the peace, which shall be filed by the auditor in the office of the clerk of the district court, after the same have been approved and recorded.

State officer's filed and re-
corded.
R. § 763.
C. '51, ch. 333.
Ex. S. 9 G. A.
ch. 27, § 2.
12 G. A. ch.
160, §§ 4, 5.

SEC. 683. The auditor of each county shall keep in his office a book to be known as the record book of officers' bonds, and record in said book, the official bonds of all county officers, including justices of the peace and constables, filed in his county; and also keep an index to said book, in which, under the title of each office, shall be entered the names of each principal and his sureties, and the date of the filing of the bond.

Same, of county
officers.
9 G. A. ch. 23,
§ 1, 2, 4.

SEC. 684. Any county officer who shall enter upon the discharge of the duties of his office, without first having caused his official bond to be recorded, shall forfeit to the county of which he is an officer, the sum of five dollars for each official act by him performed prior to the recording of said bond, and the chairman of the board of supervisors of each county is hereby required to bring suit for, or collect such penalty in the name of his county; and it shall be considered a misdemeanor for any officer who is required to give bond to act in such official capacity without giving such bond as is provided by law, and he shall be liable to a fine for an amount not exceeding the amount of the bond required of him.

Penalty.
Same, § 5.

SEC. 685. The governor and lieutenant-governor shall qualify within ten days after the result of the election shall be declared by the general assembly; judges of the supreme, district, and

When governor
and lieutenant
governor shall
qualify.
R. § 564.
C. '51, § 334.

circuit courts, by the first day of January following their election; and all other officers by the first Monday of January following their election.

SEC. 686. A failure to qualify within the time prescribed shall be deemed a refusal to serve.

SEC. 687. When any election is contested, the person elected shall have twenty days in which to qualify after the day of the decision.

SEC. 688. The bonds of officers shall be construed to cover duties required by law subsequent to giving them.

Where subsequently to the giving | his default in the management of that of a treasurer's bond, he was by law fund: *County of Mahaska v. Ingalls*, made custodian of the school fund, 14-170. held, that his sureties were liable for

SEC. 689. No official bond shall be void for want of compliance with the statute, but it shall be valid in law for the matter contained therein.

A bond which is not good as a | a bond at common law: *The State v. Fredericks*, 8-533. statutory obligation, may be good as

Bond not approved until all public property has been accounted for.
R. § 368.
C. 51, § 338.

SEC. 690. When the incumbent of an office is re-elected, he shall qualify as above directed ; but when the re-elected officer has had public funds or property in his control, under color of his office, his bond shall not be approved until he has produced and fully accounted for such funds and property to the proper person to whom he should account therefor ; and the officer or board approving the bond shall endorse upon the bond before its approval the fact that the said officer has fully accounted for and produced all funds and property before that time under his control as such officer ; and when it is ascertained that the incumbent holds over another term by reason of the non-election of a successor, or for the neglect or refusal of the successor to qualify, he shall qualify anew within a time to be fixed by the officer who approves of the bonds of such officers.

An officer holding over after re-election and failing to file a new bond, is still an officer *de facto*, and not a person falsely assuming to be an officer under § 3962, at least until his office is declared vacant: *The State v.*

Bates, 23-96.

As to liability of sureties upon the original bond of an officer holding over after the expiration of his term, see note to § 674.

SEC. 691. Any person temporarily appointed to fill an office during the incapacity or suspension of the regular incumbent, shall qualify in the manner required by this chapter for the office so to be filled.

CHAPTER 6.

OF CONTESTING ELECTIONS.

By whom, and for what causes.
R. §§ 669, 571.
C. 51, § 339,
341.

SECTION 692. The election of any person to a county office may be contested by any elector of the county:

1. When mal-conduct, fraud, or corruption on the part of the judges of election in any precinct, or of any board of canvassers, or any member of either board, sufficient to change the result;
2. When the incumbent was not eligible to the office at the time of the election;
3. When the incumbent has been duly convicted of an infamous crime before the election, and the judgment has not been reversed, annulled, or set aside, nor the incumbent pardoned at the time of the election;
4. When the incumbent has given or offered to any elector, or any judge, clerk, or canvasser of the election, any bribe or reward in money, property, or thing of value for the purpose of procuring his election;
5. When illegal votes have been received or legal votes rejected at the polls sufficient to change the result;
6. For any error in any board of canvassers in counting the votes, or in declaring the result of the election if the error would affect the result;
7. For any other cause which shows that another was the person legally elected.

[The word "when," at the beginning of the first subdivision, is "for" in the corresponding section of the Revision and in the bill as reported by the code commissioners. The change to "when" was doubtless an oversight.]

SEC. 693. The term "incumbent" in this chapter, means the person whom the canvassers declared elected. R. § 570.
C. '51, § 310.

SEC. 694. When the misconduct complained of is on the part of the judges of election in a precinct, it shall not be held sufficient to set aside the election, unless the rejection of the vote of that precinct would change the result as to that office. Same.
R. § 572.
C. '51, § 312.

SEC. 695. The court for the trial of contested county elections, shall be thus constituted: The chairman of the board of supervisors shall be the presiding officer, and the contestant and incumbent may each name a person who shall be associated with him. Court: how constituted.
R. § 573.
C. '51, § 313.

SEC. 696. The county auditor shall be clerk of this court, and keep all papers and record the proceedings in the election book, in manner similar to the record of the proceedings of the district court. But when the county auditor is a party, the court shall appoint a suitable person as clerk, whose appointment shall be recorded. Clerk.
R. § 574.
C. '51, § 314.

SEC. 697. The contestant shall file in the office of the county auditor, within twenty days after the day when the votes were canvassed, a written statement of his intention to contest the election, setting forth the name of the contestant and that he is an elector of the county, the name of the incumbent, the office contested, the time of the election, and the particular causes of contest, which statement shall be verified by the affidavit of the contestant, or some other elector of the county, that the causes set forth are true as he verily believes. The contestant must also file with the county auditor a bond, with security to be approved by said auditor, conditioned to pay all costs in case the election be confirmed, or the statement be dismissed, or the prosecution fail. When the auditor is a party, the clerk of the district court shall receive such statement and approve such bond. Contestant to file statement.
R. § 575.
C. '51, § 315.

Same.
R. § 576.
C. '51, § 346.

Day of trial:
notice.
R. §§ 577, 579,
580.
C. '51, §§ 347,
349, 350.

Selection of
judges.
R. §§ 577-8.
C. '51, §§ 347-8.

Trial post-
poned.
R. § 583.
C. '51, § 353.

Manner of:
powers of
court.
R. §§ 584, 588,
591.
C. '51, §§ 354,
358, 361.

Testimony.
R. § 581.
C. '51, § 331.

Subpoenas.
R. §§ 582, 586.
C. '51, §§ 352,
356.

Statement not
dismissed for
want of form:
amendment.
R. §§ 585, 591.
C. '51, §§ 355,
361.

SEC. 698. When the reception of illegal or the rejection of legal votes is alleged as a cause of contest, the names of the persons who so voted, or whose votes were rejected, with the precinct where they voted or offered to vote, shall be set forth in the statement.

SEC. 699. The chairman of the board of supervisors shall thereupon fix a day for the trial, not more than thirty, nor less than twenty days thereafter; and shall cause a notice of such trial to be served on the incumbent, with a copy of the contestant's statement, at least ten days before the day set for trial.

SEC. 700. The contestant and incumbent shall each file in the auditor's office, on or before the day of trial, a written nomination of one associate judge of the contested election, who shall be sworn in manner and form as trial jurors are in trials of civil action. If either the contestants or the incumbent fail to nominate, the presiding judge shall appoint for him. When either of the nominated judges fails to appear on the day of trial, his place may be filled by another appointment under the same rule.

SEC. 701. The trial shall proceed at the time appointed unless postponed for good cause shown by affidavit, the terms of which postponement are in the discretion of the court.

SEC. 702. The proceedings shall be assimilated to those in an action, so far as practicable, but shall be under the control and direction of the court, which shall have all the powers of the district court necessary to the right hearing and determination of the matter, to compel the attendance of witnesses, swear them and direct their examination; to punish for contempt in its presence or by disobedience to its lawful mandate, to adjourn from day to day, to make any order concerning intermediate costs, and to enforce its orders by attachment. It shall be governed by the rules of law and evidence applicable to the case.

[The word "intermediate" in the eighth line, as it stands in the original, is "immediate" in the printed code.]

Sec. 703. The testimony may be oral or by depositions, taken as in an action at law in the district court.

Sec. 704. Subpoenas for witnesses may be issued at any time after the notice of trial is served, either by the clerk of the district court, or by the county auditor. The command to a witness may be, to appear at....., on....., to testify in relation to a contested election, wherein A B is contestant and C D is incumbent.

Sec. 705. The statement shall not be dismissed for want of form, if the particular causes of contest are alleged with such certainty as will sufficiently advise the incumbent of the real grounds of contest. If any part of the causes are held insufficient, they may be amended, but the incumbent will be entitled to an adjournment if he state on oath that he has matter of answer to the amended causes, for the preparation of which he needs further time. Such adjournment shall be upon such terms as the court deem reasonable; but if all the causes are held insufficient, and an amendment is asked, the adjournment shall be at the cost of contestant. If no amendment is asked for or made, or in case of entire failure to prosecute, the proceedings may be dismissed.

SEC. 706. The style, form, and manner of service of process and papers, and the fees of officers and witnesses, shall be the same as in the district court, so far as the nature of the case admits.

SEC. 707. The trial of contested county elections shall take place at the county seat, unless some other place within the county is substituted by the consent of the court and parties.

SEC. 708. The court, or the presiding judge, may direct the attendance of the sheriff or a constable when deemed necessary.

SEC. 709. The court may require any person called as a witness who voted at such election, to answer touching his qualifications as a voter; and if he was not a qualified voter in the county when he voted, then to answer for whom he voted; and if the witness answers such questions, no part of his testimony on that trial shall be used against him in any criminal action.

SEC. 710. The judges shall be entitled to receive four dollars a day for the time occupied by the trial.

SEC. 711. The contestant and the incumbent are liable to the officers and witnesses for the costs made by them respectively. But if the election be confirmed, or the statement be dismissed, or the prosecution fail, judgment shall be rendered against the contestant for costs; and if the judgment be against the incumbent, or the election be set aside, it shall be against him for costs.

SEC. 712. A transcript of the judgment, filed and recorded in the office of the clerk of the circuit court as provided in relation to transcripts from justices' courts, shall have the same effect as there provided, and execution may issue thereon.

SEC. 713. If notice of contesting the election of an officer is filed before the certificate of election is delivered to him, it shall be withheld until the determination of the contest.

SEC. 714. The court shall pronounce judgment whether the incumbent or any other person was duly elected, and the person so declared elected will be entitled to his certificate on qualification. If the judgment be against the incumbent, and he has already received the certificate, the judgment annuls it. If the court find that no person was duly elected, the judgment shall be that the election be set aside.

SEC. 715. When either the contestant or incumbent shall be in possession of the office, by holding over or otherwise, the presiding judge shall, if the judgment be against the party so in possession of the office and in favor of his antagonist, issue an order to carry into effect the judgment of the court, which order shall be under the seal of the county, and shall command the sheriff of the county to put the successful party into possession of the office without delay, and to deliver to him all books and papers belonging to the same, and the sheriff shall execute such order as other writs.

SEC. 716. The party against whom judgment is rendered may appeal within twenty days to the circuit court, but if he be in possession of the office, such appeal shall not supersede the execution of the judgment of the court as provided in the preceding section, unless he give a bond with security, to be approved by the circuit judge, in a sum to be fixed by the judge, and which shall be at least double the probable compensation of such officer

for six months, which bond shall be conditioned that he will prosecute his appeal without delay, and that if the judgment appealed from be affirmed, he will pay over to the successful party all compensation received by him while in possession of said office after the judgment appealed from was rendered.

Whether notice of appeal in such case should be in writing *quære*; but where verbal notice was given at the time the judgment of the court of contest was rendered and the parties

then agreed as to disposition to be made of the ballot box, *held*, that the notice was sufficient under the circumstances: *McIntosh v. Livingston*, 41-219.

Judgment on appeal.
Same, § 3.

SEC. 717. If, upon appeal, the judgment be affirmed, the circuit court may render judgment upon the bond for the amount of damages against the appellant and his sureties on the bond.

OF CERTAIN STATE OFFICERS.

By whom.
R. § 598.
C. § 51, § 368.

Court: how constituted.
R. § 599.
C. § 51, § 369.
Clerk.
R. § 600.
C. § 51, § 370.

Statement filed.
R. § 601.
C. § 51, § 371.

Time of trial: notice.
R. § 601.
C. § 51, § 371-2.

Subpoenas: depositions.
R. § 603.
C. § 51, § 373.

Process.
R. § 604.
C. § 51, § 374.

Place of trial.
R. § 605.
C. § 51, § 375.

Compensation.
R. § 606.
C. § 51, § 376.

SEC. 718. The election of any person to any state office, except that of governor or lieutenant-governor, or to the office of district judge, circuit judge, or district attorney, may be contested by an eligible person who received votes for the same office, for any of the causes before mentioned.

SEC. 719. The court for the trial of contested state elections shall consist of three judges, not interested, of the supreme, district, or circuit court, or any of them, as may be convenient.

SEC. 720. The secretary of state shall be the clerk of this court. But if the person holding that office is a party to the contest, the clerk of the supreme court, or in case of his absence or inability, the auditor of state shall be clerk.

SEC. 721. The statement must be filed with such clerk within thirty days from the day when the votes are canvassed.

SEC. 722. The clerk shall, as soon as practicable, ascertain which three of the judges residing nearest the seat of government can attend the trial, fix a time therefor, and notify the judges, and cause a copy of the statement and a notice of the time fixed for trial to be served upon the incumbent, and a notice of the time to be served upon the contestant at least twenty days before the day of trial, and returns thereof to be made to him. When convenient, the service of the above papers may be made by the clerk of this court. The time for the trial shall not be set beyond the last Monday of January following the election.

SEC. 723. The secretary of state, the several clerks of the supreme and district courts, under their respective seals of office, and either the judges of the supreme, district, or circuit courts, under their hands, may issue subpoenas for witnesses to attend this court; and disobedience to such process may be treated as a contempt. Depositions may also be taken as in the case of contested county elections.

SEC. 724. Process and papers may be issued to and served by the sheriff of any county.

SEC. 725. The trial shall take place at the seat of government, unless some other place be substituted by consent of the court and both parties.

SEC. 726. The judges shall be entitled to receive for their travel and attendance, the sum of six dollars each per day, with

such mileage as is allowed to members of the general assembly, to be paid from the state treasury.

SEC. 727. A transcript of the judgment rendered by such court, filed in the office of the clerk of the supreme court, shall have the force and effect of a judgment of the supreme court, and execution may issue therefrom in the first instance, and against the party's property generally.

SEC. 728. The presiding judge of this court shall have authority to carry into effect any order of the court after the adjournment thereof, by attachment or otherwise.

SEC. 729. The provisions of this chapter in relation to contested county elections, are applied to contested state elections when applicable, except as herein otherwise directed.

Judgment filed: execution.
R. § 607.
C. '51, § 377.

Power of presiding judge.
R. § 608.
C. '51, § 378.

Provisions applicable.
R. § 609.
C. '51, § 379.

OF MEMBERS OF THE GENERAL ASSEMBLY.

SEC. 730. The election of any person to a seat in either branch of the general assembly may be contested by any qualified voter of the district to be represented.

By whom.
R. § 610.
C. '51, § 380.

SEC. 731. The contestant shall, within thirty days after the canvass, serve on the incumbent a statement as required in relation to county officers, except the list of illegal votes, which shall be served with the notice of taking depositions relative to them, and if no such deposition is taken, then twenty days before the first day of the next session.

SEC. 732. Any judge or clerk of a court of record may issue subpoenas in the above cases as in those before provided, and compel the attendance of witnesses thereunder.

Subpoenas.
R. § 612.
C. '51, § 382.

SEC. 733. Depositions may be taken in such cases in the same manner and under the same rules as in an action at law in the district court; but no cause for taking the same need be shown.

Depositions.
R. § 613.
C. '51, § 383.

SEC. 734. A copy of the statement, and of the notice for taking depositions with the service endorsed, and verified by affidavit, if not served by an officer, shall be returned to the officer taking the depositions, and then with the depositions shall be sealed up and transmitted to the secretary of state with an endorsement thereon showing the nature of the papers, the names of the contesting parties, and the branch of the general assembly before which the contest is to be tried.

Same.
R. § 614.
C. '51, § 384.

SEC. 735. The secretary shall deliver the same unopened to the presiding officer of the house in which the contest is to be tried, on or before the second day of the session, regular or special, of the general assembly next after taking the depositions, and the presiding officer shall immediately give notice to his house that such papers are in his possession.

Statement and deposition given presiding officer.
R. § 615.
C. '51, § 385.

SEC. 736. Nothing herein contained shall be construed to abridge the right of either branch of the general assembly to grant commissions to take depositions, or to send for and examine any witness it may desire to hear on such trial.

Power of general assembly.
R. § 616.
C. '51, § 386.

OF GOVERNOR.

SEC. 737. The election of any person declared duly elected to the office of governor or lieutenant-governor, may be contested by an eligible person who received votes for the office contested.

By whom.
R. § 617.
C. '51, § 387.

See Const., Art. 4, § 5.

Notice of contest.
R. § 618.
C. '51, § 388.

Notice to incumbent.
R. § 619.
C. '51, § 389.

To each house.
R. § 620.
C. '51, § 390.

Court: how chosen.
R. § 621.
C. '51, § 391.

Powers and proceedings of committee.
R. § 622.
C. '51, § 392.

Testimony.
R. § 623.
C. '51, § 393.
Judgment.
R. § 624.
C. '51, § 394.
Other provisions.
R. § 626.
C. '51, § 396.

SEC. 738. The contestant shall, within thirty days after the proclamation of the election, deliver to the presiding officer of each house of the general assembly a notice of his intent to contest, and a specification of the grounds of such contest as before directed.

SEC. 739. As soon as the presiding officers have received the notice and specifications, they shall make out a notice directed to the incumbent, including a copy of the specifications, which shall be served by the sergeant-at-arms.

SEC. 740. The presiding officers shall also immediately make known to their respective houses that such notice and specifications have been received.

SEC. 741. Each house shall forthwith proceed, separately, to choose seven members of its own body in the following manner:

1. The names of members of each house, except the presiding officer, written on similar paper tickets, shall be placed in a box, the names of the senators in their presence by their secretary, and the names of the representatives in their presence by their clerk;

2. The secretary of the senate in the presence of the senate, and the clerk of the house of representatives in the presence of the house, shall draw from their respective boxes the names of seven members each;

3. As soon as the names are thus drawn, the names of the members drawn by each house shall be communicated to the other, and entered on the journals of each house.

SEC. 742. The members thus drawn shall constitute a committee to try and determine the contested election, and for that purpose shall hold their meetings publicly at the place where the general assembly is sitting at such times as they may designate; and may adjourn from day to day, or to a day certain, not more than four days distant, until such trial is determined; shall have power to send for persons and papers, and to take all necessary means to procure testimony, extending like privileges to the contestant and the incumbent, and shall report their judgment to both branches of the general assembly, which report shall be entered on the journals of both houses.

SEC. 743. The testimony shall be confined to the matters contained in the specifications.

SEC. 744. The judgment of the committee pronounced in the final decision on the election shall be conclusive.

SEC. 745. The provisions of this chapter in relation to other contested elections are applied to a contested election for governor, when applicable, except as herein otherwise directed.

CHAPTER 7.

OF REMOVAL AND SUSPENSION FROM OFFICE.

Causes.
R. § 628.
C. '51, § 397.

SECTION 746. All county and township officers may be charged, tried, and removed from office for the causes following:

1. For habitual or wilful neglect of duty;

2. For gross partiality;
3. For oppression;
4. For extortion;
5. For corruption;
6. For wilful mal-administration in office;
7. Upon conviction of a felony;
8. For a failure to produce and fully account for all public funds and property in his hands at any inspection or settlement.

[The word "partiality" in the second subdivision, as in the original, is "impartiality" in the printed code.]

SEC. 747. Any person may make such a charge, and the district court shall have exclusive original jurisdiction thereof by the service of original notice.

SEC. 748. The proceedings shall be as nearly like those in other actions at law as the nature of the case admits, excepting where otherwise provided in this chapter.

SEC. 749. The petition shall be by an accuser against the accused, and shall contain the charges with the necessary specifications under them and be verified by any elector.

SEC. 750. It will be sufficient that the notice require the accused to appear and answer the petition of A. B. (naming the accuser), for "official misdemeanors;" but a copy of the petition must be served with the notice.

SEC. 751. If the person who holds the office of clerk of the district and circuit court is the accused in either of those capacities, his removal or suspension shall operate in both courts and the petition may be filed with the county auditor, and both he and the clerk may issue subpoenas for witnesses, and the county auditor shall deliver the papers to the judge of the district court, on its sitting.

SEC. 752. If a continuance of the action take place beyond the return term, the court may suspend the accused from the functions of his office until the determination of the matter, if sufficient cause appear from testimony, or affidavits then presented; and if such suspension take place, the board of supervisors shall temporarily fill the office by appointment.

In case of suspension of sheriff, the person appointed by the board, as here provided, and not the deputy sheriff (as provided by § 767 in the case of disability of the sheriff) is authorized to act: *McCue v. Circuit Court, &c.*, 51-60. The board may so appoint in case an officer is suspended, under § 756, although the petition provided for in § 757 be not filed at the term: *Ibid.*

SEC. 753. When the accused is an officer of the court and is suspended, the court may supply his place by appointment for the term.

SEC. 754. The question of fact shall be tried as in other actions, and if the accused is found guilty, judgment shall be entered removing the officer from his office, and declaring the latter vacant; and a copy thereof shall be certified to the county auditor, who shall cause it to be entered in the election book.

SEC. 755. The accuser and the accused are liable to costs as in other actions.

By whom made.
R. § 629.
C. '51, § 398.

Proceedings.
R. § 630.
C. '51, § 399.

Petition.
R. § 631.
C. '51, § 400.

Notice.
R. § 632.
C. '51, § 401.

When clerk is the accused.
R. § 634.
C. '51, § 403.

Suspension.
R. § 635.
C. '51, § 404.

Costs.
R. § 637.
C. '51, § 406.

Judges may
suspend clerk
or sheriff.
R. § 639.
C. '51, § 408.

SEC. 756. The judges of the district and circuit courts in their respective districts, shall have authority, on their own motion, to suspend from office any clerk of those courts, or sheriff of a county, for any of the causes mentioned in this chapter coming to their own knowledge, or manifestly appearing from the papers or testimony in any proceeding in court.

Direct petition
to be filed.
R. § 610.
C. '51, § 409.

The action is commenced by the district court taking cognizance of the matter and entering an order requiring the district attorney to file a petition, and such action operates as a suspension, although the petition be not filed at that term. The vacancy so caused may be filled by the board of supervisors under § 752: *McCue v. Circuit Court, &c.*, 51-60.

Suspension cer-
tified.
R. § 641.
C. '51, § 410.

SEC. 757. Upon such suspension the court may direct the district attorney to file a petition in the name of the county; but it need not be verified.

SEC. 758. Such order of suspension shall be certified to the county auditor and be by him entered in the election book.

Accounts ex-
amined.
R. §§ 46, 47, 55,
56.

SUSPENSION OF STATE OFFICERS.

SEC. 759. Whenever, in the judgment of the governor, the public service requires it, he shall appoint a commission of three competent accountants, who shall examine the books, papers, vouchers, moneys, securities, and other documents in the possession or under the control of any state officer, shall make out a full, complete and specific statement of the transactions of said officer, with, for, or on behalf of the state, showing the true balances in each case and report the same to the governor with such suggestions as they may deem proper.

Defalcation:
suspension.
R. § 48.

SEC. 760. Whenever any commission appointed as aforesaid, or under the provisions of section one hundred and thirty-two, of chapter nine, of title two of this code, shall report that any officer has been guilty of any defalcation or misappropriation of the public money, or that his accounts, papers, and books are improperly or unsafely kept, and that the state is liable to suffer loss thereby, the governor shall forthwith suspend such officer from the exercise of his office, and require him to deliver all the money, books, papers, and other property of the state to the governor to be disposed of as hereinafter provided.

Consequences.
R. § 49.

SEC. 761. After such suspension, it shall be unlawful for such officer to exercise or attempt to exercise any of the functions of his office until such suspension shall be revoked, and any attempt to exercise said office after such suspension, shall be deemed a misdemeanor, and shall subject the offender for each offense to the penalty of not more than one year's imprisonment in the county jail, and not more than one thousand dollars fine, to be recovered and enforced as provided by law.

Temporary ap-
pointment.
R. § 51.

SEC. 762. In every such case of suspension, the governor shall appoint some suitable person to fill, temporarily, the office, and such person having qualified as required by law, shall perform all the duties and enjoy all the rights to the said office belonging, until the removal of the suspension of his predecessor or the election of a successor.

SEC. 763. Whenever the govenor shall suspend any such public officer, he shall direct the proper legal steps to be taken to indemnify the state from loss.

SEC. 764. The commissioners provided for in this chapter shall each receive the sum of three dollars per day, for the time actually employed in the performance of their duties.

SEC. 765. Said commissioners shall have power, when in session to administer oaths, to issue subpoenas, to call any person before them to testify in reference to any fact connected with their investigation; also to require such person to produce any papers or books which the district court might require to be produced.

[As amended by 16th G. A., ch. 20, inserting the clause as to administering oaths.]

CHAPTER 8.

OF DEPUTIES.

SECTION 766. The secretary, auditor, and treasurer of state, the superintendent of public instruction, the register of the state land office, each clerk of the district and circuit courts, county auditor, treasurer, sheriff, surveyor, and recorder, may appoint a deputy for whose acts he shall be responsible, and from whom he shall require bonds; which appointment must be in writing and be approved by the officer who has the approval of the principal's bond, and shall be revocable by writing under the principal's hand, and both the appointment and the revocation shall be filed and kept in the office of the secretary of state and county auditor respectively.

The sheriff is responsible for acts of his deputy, and when the latter collects money on execution and fails to pay it over to the party entitled thereto, an action should be brought

against the sheriff himself. The bond of the deputy is for the protection of his principal: *Brayton v. Town*, 12-346.

SEC. 767. In the absence or disability of the principal, the deputy shall perform the duties of his principal pertaining to his own office; but when any officer is required to act in conjunction with or in the place of another officer, his deputy cannot supply his place; *provided*, that in counties having two county seats, the deputy may hereafter perform any and all acts of the principal.

[As amended by 16th G. A., ch. 4, adding the proviso.]

Where the duties of a public officer are of a ministerial character they may be discharged by deputy; duties of a judicial character cannot be so discharged. The deputy has the right to subscribe the name of his principal, and the act of the deputy in the name of his principal, within the scope of his authority, is the act of his principal. And held, that a deputy clerk had authority in the name of the principal, to certify to the acknowledgment of a deed under § 1955: *Abrams v. Ervine*, 9-87. The deputy clerk has the same power to administer oaths as his principal: *Wood v. Bailey*, 12-46. And it is not necessary that the absence or inability of

Powers of
deputy.
R. § 648.
C. 51, § 412.

the principal should be stated: *Finn v. Rose*, *id.* 565.

The deputy county treasurer has, *prima facie*, authority to sign the name of his principal to a certificate of redemption from tax sale: *Byington v. Allen*, 11-3.

As to action of deputy in place of sheriff in drawing jurors, see § 240

and notes.

The suspension from office of a sheriff, as provided in § 756, is not such *disability* on his part as will authorize the deputy to act in his place. In such case his duties are to be performed by the person appointed under §§ 752-3: *McCue v. Circuit Court, etc.*, 51-60.

Who may be appointed.
R. § 644.
C. 51, § 413.

Sheriff.
R. § 646.
C. 51, § 415.
oath.
R. § 647.
C. 51, § 416.

Compensation.
R. § 648.
C. 51, § 417.

SEC. 768. The secretary, treasurer, and auditor of state can neither of them appoint either of the others his deputy; nor can either the clerk of the district court, auditor, recorder, treasurer, or sheriff of a county, appoint either of the others.

SEC. 769. The sheriff may appoint such number of deputies as he sees fit.

SEC. 770. Each deputy shall take the same oath as his principal, which shall be endorsed upon and filed with the certificate of his appointment.

SEC. 771. When a county officer receiving a salary is compelled by the pressure of the business of his office to employ a deputy, the board of supervisors may make a reasonable allowance to such deputy.

The allowance to the deputy may be fixed, at the time he is appointed, in the form of a stipulated salary, and in such case, the amount fixed will limit the recovery; but where no allowance is fixed, the county must pay a reasonable compensation for the necessary services rendered, and the payment is not left discretionary: *Bradley v. Jefferson Co.* 4 Gr. 300; *Harvey v. Tama Co.*, 46-522; *Washington Co. v. Jones*, 45-260, 265. But a deputy employed merely for the personal accommodation of the officer

cannot recover compensation from the county: *Harvey v. Tama Co.*, *supra*.

The officer himself cannot recover against the county for money paid as compensation for a deputy. The county is liable to the deputy, and not to the principal: *County of Mahaska v. Ingalls*, 14-170.

The deputy clerk may recover compensation under this section in addition to the salary allowed the clerk as provided by § 3784: *Washington Co. v. Jones*, 45-260, 265.

CHAPTER 9.

OF ADDITIONAL SECURITY AND THE DISCHARGE OF SURETIES.

Bonds of State officers increased.
R. § 660.

Additional security required.
R. §§ 349, 350.
C. 51, §§ 418, 419.

SECTION 772. Whenever the governor shall deem it advisable that the bonds of any state officer should be increased and the security enlarged, or a new bond given, he shall notify said officer of the fact, the amount of new or additional security to be given, and the time when the same shall be executed, which said new security shall be approved and filed as provided by law.

SEC. 773. Any officer or board who has the approval of another officer's bond, when of opinion that the public security requires it, upon giving ten days' notice to show cause to the contrary, may require him to give such additional security by a new bond, as may be deemed requisite, within a reasonable time to be prescribed.

SEC. 774. If a requisition made under either of the foregoing sections be complied with, both the old and the new security shall be in force; and if not complied with, the office shall become and be declared vacant, and the proceeding be certified to the proper officer to be recorded in the election book or township record.

SEC. 775. When any surety on the bond of a civil officer conceives himself in danger by remaining surety, and desires to be relieved of his obligation, he may petition the approving officer or board above referred to for relief, stating the ground of his apprehension.

SEC. 776. The surety shall give the principal at least twenty-four hours' notice of the presenting and filing of the petition, with a copy thereof. At the expiration of this notice, the approving officer may hear the matter or may postpone the hearing as the case permits or requires.

SEC. 777. If, upon the hearing, there appears substantial ground for apprehension, the approving officer or board may order the principal to give a new bond and to supply the place of the petitioning surety within a reasonable time to be prescribed; and upon such new bond being given, the petitioning surety upon the former bond shall be declared discharged from liability on the same for future acts; which order of discharge shall be entered in the proper election book, but the bond will continue binding upon those who do not petition for relief.

Sureties upon the new bond are not liable for moneys coming into the principal's hands before such new bond was executed: *Thompson v. Dickerson*, 22-360.

SEC. 778. If the new bond is not given as required, the office shall be declared vacant, and the order to that effect entered in the proper election book.

SEC. 779. If the proceedings relate to a justice of the peace and he is removed from office, the county auditor shall notify the proper township trustees, or clerk of the removal.

SEC. 780. The approving officer may issue subpoenas in his official name for witnesses, compel their attendance, and swear them.

CHAPTER 10.

OF VACANCIES AND SPECIAL ELECTIONS.

SECTION 781. Every civil office shall be vacant upon the happening of either of the following events at any time before the expiration of the term of such office, as follows:

1. The resignation of the incumbent;
2. His death;
3. His removal from office;
4. The decision of a competent tribunal declaring his office vacant;
5. His ceasing to be a resident of the state, district, county;

Civil office:
when vacant.
R. § 662.
C. '51, § 429.
9 G. A. ch. 54.

or township in which the duties of his office are to be exercised, or for which he may have been elected;

6. A failure to elect at the proper election, there being no incumbent to continue in office until his successor is elected and qualified, nor other provision relating thereto;

7. A forfeiture of office as provided by any law of the state;

8. Conviction of an infamous crime, or of any public offense involving the violation of his oath of office;

9. The acceptance of a commission to any military office, either in the militia of this state or in the service of the United States which requires the incumbent in the civil office to exercise his military duties out of the state for a period not less than sixty days.

A resignation in writing made to the proper officer, creates a vacancy without any formal acceptance on the part of such officer: *Gates v. Delaware Co.*, 12-405.

The acceptance by an officer of another office which is incompatible with that which he holds, would vacate the one first held; but the incompatibility must be such as arises from the nature of the offices or their

relation to each other; and held that the office of captain in the military service of the United States was not so incompatible with that of district attorney, as that an acceptance of the one should necessarily make a vacancy in the other. (Decided before the passage of 9 G. A. ch. 54, being ¶ 9 of this section): *Bryan v. Cattell*, 15-538.

SEC. 782. Resignation of civil officers may be made as follows:

1. By the governor to the general assembly, if in session; if not, to the secretary of state;

2. By senators and representatives in congress, and by all officers elected by the qualified voters of the state or chosen by the general assembly, and by judges of courts of record, and district attorneys, to the governor;

3. By senators and representatives in the general assembly, to the presiding officer of their respective bodies, if in session, who shall immediately transmit information of the same to the governor; if such bodies are not in session, to the governor;

4. By all county officers to the board of supervisors, and by members of the board of supervisors, to the county auditor;

5. By all township officers, to the township clerk; and by the township clerk to the township trustees, or any one of them;

6. By all officers holding by appointment, to the officer or body by whom they were appointed.

[As amended in sub-division 2, by 17th G. A., ch. 107, § 1, so as to include officers chosen by the general assembly.]

SEC. 783. Vacancies shall be filled as follows:

In the offices of clerk and reporter of the supreme court, by the supreme court;

In all other state offices, and in the membership of any board or commission created by the state, where no other method is specially provided, by the governor;

In county offices by the board of supervisors; and in the membership of such board by the county clerk, auditor, and recorder;

In township offices by the trustees, but where the offices of the three trustees are all vacant, the clerk shall appoint, and if there be no clerk, the county auditor shall appoint.

See Const. Art. 4, § 10.

Resignations:
how made.
R. § 663.
C. 31, § 430.
10 G. A. ch. 69.
13 G. A. ch. 148,
§ 6.

Vacancies:
how filled.
R. § 664.
C. 31, § 436.
11 G. A. ch. 88.
12 G. A. ch. 86,
§ 2; ch. 137, § 3.
13 G. A. ch. 47;
ch. 148, § 6.

SEC. 784. Every officer elected or appointed for a fixed term, shall hold office until his successor is elected and qualified, unless the statute under which he is elected or appointed expressly declares the contrary; *provided*, that this section shall not be construed in any way to prevent the removal or suspension of such officer during or after his term, in cases provided by law.

See Const. Art. 3, § 3; Art. 4, §§ 2, 15, 22; Art. 5, §§ 3, 5, 12, 13.

SEC. 785: Appointments under the provisions of this chapter shall be in writing, and continue until the next election at which the vacancy can be filled and until a successor is elected and qualified, and be filed with the secretary or proper township clerk, or in the proper county office, respectively.

SEC. 786. Persons appointed to office as herein provided, shall qualify in the same manner as those elected, within a time to be prescribed in their appointments, and the provisions of the chapter relating to qualification for office are to extend them.

SEC. 787. A person appointed as herein contemplated, may be removed by the officer appointing, and no person can be appointed who has been removed from office within one year.

SEC. 788. When a vacancy occurs in a public office, possession shall be taken of the office room, and of the books, papers, and all things pertaining to the office, to be held until the election or appointment and qualification of a successor, as follows:

Of the office of the county auditor, by the clerk of the district court;

Of that of the clerk or treasurer, by the county auditor;

Of any of the state officers, by the governor; or in his absence or inability at the time of the occurrence, as follows:

Of the secretary, by the treasurer;

Of the auditor, register of the land office, or superintendent of public instruction, by the secretary;

Of the treasurer, by the secretary and auditor, who shall make an inventory of the money and warrants therein, sign the same, and transmit it to the governor if he be in the state; and the secretary shall take the keys of the safes and desks after depositing the books, papers, money, and warrants therein, and the auditor shall take the key of the office room.

SEC. 789. Vacancies occurring in the township offices, ten days; in county offices, fifteen days; and in all other public elective offices, thirty days prior to a general election, shall be filled thereat. When a vacancy occurs in the office of representative in congress, or senator or representative in the general assembly, and the body in which such vacancy exists will convene prior to such election, the governor shall order a special election to fill such vacancy at the earliest practicable time, and ten days notice of such election shall be given.

SEC. 790. Whenever a vacancy shall occur in the office of a senator or representative in the general assembly, the auditor of the county in which such vacancy occurs shall notify the governor of such fact and the cause of the vacancy; and if more than one county is represented in the district in which such vacancy may occur, then such notice shall be given by the auditor of the county in which the late member resided.

[Seventeenth General Assembly, Chapter 107.]

[Sec. 1 amends § 782, which see.]

In case of vacancy in board.

Proviso: Not apply to regents of university.

Duty of governor.

SEC. 2. In case of a vacancy from any cause, other than resignation or expiration of term, occurring in any of the boards of trustees or directors of state institutions, it shall be the duty of the secretary of the board wherein the vacancy shall happen, to notify the governor thereof immediately; *provided*, that this section shall not apply to vacancies in the board of regents of the state university.

SEC. 3. Upon receiving notice of vacancies which are required to be filled by the general assembly, the governor shall at once notify that body thereof, if it be in session, and immediately upon its next convening if it be not. He shall also notify the board of regents of all vacancies occurring therein by resignation.

SPECIAL ELECTIONS.

Provisions for R. & 673.
C. 51, § 26.

SEC. 791. The provisions relating to general elections, shall govern special elections except where otherwise provided by law.

Canvass: when and by whom made. 9 G. A. ch. 88, §§ 1, 3.

SEC. 792. In all cases where special elections are held to fill vacancies in the offices of senator or representative in the general assembly, or representative in congress, the board of county canvassers shall meet at 12 o'clock M., on the second day after said election, to canvass the votes cast at said election, and the auditor, within four days after such election, shall transmit to the secretary of state an abstract of the votes cast at said election, if there be more than one county in the district.

State canvass. Same, § 4.

SEC. 793. Within fifteen days after said election, in the case last mentioned, the board of state canvassers shall meet and canvass the votes cast to fill such vacancy, and if the returns have not been received from all the counties composing said district, they may adjourn to such day as they deem necessary, not exceeding ten, for the purpose of receiving said returns.

In office of justice. 11 G. A. ch. 137, §§ 1, 2.

SEC. 794. Whenever a vacancy occurs in the office of a justice of the peace or constable more than thirty days prior to any general election, the county auditor shall immediately notify the clerk of the township in which the vacancy exists, and the township clerk, within five days after receiving such notice, shall notify each of the trustees of his township in writing, fixing the time and place that they shall meet for the purpose of filling such vacancy by appointment. Such notice may be served by any constable of the township, and shall be served at least five days prior to such meeting.

Trustees to ap-point: qualifi-cation. Same, §§ 3, 4, 5.

SEC. 795. The trustees shall meet in accordance with such notice and fill such vacancy, and in five days after such appointment has been made, the township clerk shall record it in the township record book, and shall cause a notice to be served upon the person so appointed, informing him of his appointment, by any constable in the township in the manner prescribed by law for the service of notices, and any person so appointed and notified, shall qualify within ten days after such notice has been served upon him. The auditor may approve of the bond of a justice of the peace and constable so appointed, by the recommendation of the sufficiency of the sureties upon such bond, signed by any member of the board of supervisors.

TITLE VI.

OF REVENUE.

CHAPTER 1.

OF THE ASSESSMENT OF TAXES.

SECTION 796. The board of supervisors of each county shall, annually, at their September session, levy the following taxes upon the assessed value of the taxable property in the county:

- | | |
|--|---|
| 1. For state revenue, one and a half mills on a dollar, or such rate as may be directed by the executive council, not exceeding two mills on a dollar; | <small>Levy: amount
of
R. § 710.
C. 51, § 451.
Ex. S. & G. A.
ch. 24.
11 G. A. ch. 87,
§ 1.</small> |
| 2. For ordinary county revenue, including the support of the poor, not more than four mills on a dollar and a poll tax of fifty cents; | |
| 3. For support of schools, not less than one, nor more than three mills on a dollar; | |
| 4. For making and repairing bridges, not more than three mills on a dollar. | |

[Fifteenth General Assembly, Chapter 28.]

SEC. 1. Subdivision two of section 793 [796] of the code of 1873 ~~be and the same is hereby amended by striking out the word "Four"~~ Counties of not in the second line of said sub-division two of section 796 of the code of 1873, and inserting in lieu thereof the word "Six:" *Provided*, That the provisions hereof shall not apply to counties having a population exceeding 14,000 inhabitants; except to counties having an area exceeding nine hundred square miles, and to such counties the provisions hereof shall apply.

[As amended by adding the exception at the end of the proviso, 18th G. A., ch. 13.]

As to what action of the board is sufficient to constitute a levy, see *West v. Whitaker*, 37-598.

These provisions contain and confer the only power given by law to the board of supervisors, to levy county

taxes for any purpose, except under §§ 309 and 312. § 3049 does not authorize the levy of a tax in excess of the limit here imposed: *Iowa R. Land Co. v. Sac Co.*, 39-124.

EXEMPTIONS.

SEC. 797. The following classes of property are not to be taxed, and they may be omitted from the assessments herein required:

Property ex-
empt.
R. § 711.
C. 51, § 456

- School. 1. The property of the United States and of this state, including university, agricultural college and school lands, and all property leased to the state; the property of a county, township, city, incorporated town, or school district, when devoted entirely to the public use and not held for pecuniary profit; public grounds, including all places for the burial of the dead; fire engines, and all implements for extinguishing fires, with the grounds used exclusively for their buildings and for the meetings of the fire companies; all public libraries, grounds and buildings, of literary, scientific, benevolent, agricultural, and religious institutions, and societies devoted solely to the appropriate objects of these institutions, not exceeding six hundred and forty acres in extent, and not leased or otherwise used with a view to pecuniary profit; and all property leased to agricultural, charitable institutions, and benevolent societies, and so devoted during the term of such lease; *provided*, that all deeds by which such property is held shall be duly filed for record before the property therein described shall be omitted from the assessment;
- Fire engines. 2. The books, papers, and apparatus belonging to the above institutions, used solely for the purposes above contemplated, and the like property of students in any such institution, used for their education;
- Public libraries
and property of
religious socie-
ties, &c.
9 G. A. ch. 31,
§ 1.
10 G. A. ch. 79,
§ 1.
- Books, papers,
and apparatus. 3. Money and credits belonging exclusively to such institutions and devoted solely to sustaining them, but not exceeding in amount or income the sum prescribed by their charter;
- Enumeration
of articles. 4. Animals not hereafter specified, the wool shorn from sheep belonging to the person giving the list, his farm produce harvested within one year previous to the listing, private libraries not exceeding three hundred dollars in value, family pictures, kitchen furniture, beds and bedding requisite for each family, all wearing apparel in actual use, and all food provided for the family; but no person from whom a compensation for board or lodging is received or expected, is to be considered a member of a family within the intent of this clause;
- Polls or estates
of infirm per-
sons. 5. The polls or estates, or both, of persons who by reason of age or infirmity may, in the opinion of the assessor, be unable to contribute to the public revenue; such opinion, and the facts on which it is based, being in all cases reported to the board of equalization by the assessor, or any other person, and subject to reversal by them;
- Farming uten-
sils. 6. The farming utensils of any person who makes his livelihood by farming, and the tools of any mechanic, not in either case to exceed three hundred dollars in value;
- Lands entered
during the
year. 7. Government lands entered or located, or lands purchased from this state, shall not be taxed for the year in which the entry, location, or purchase is made.
- PAR. 1. The residence of a professor owned by a college, and a parsonage owned by a church, are so devoted to the appropriate objects of such institutions as to be exempt from taxation: *Trustees of Griswold College v. The State*, 46-275.
- Places for the burial of the dead
- exempt from taxation: *Mulroy v. Churchman*, 52-238.
- Property bought in by a county on judgments against a defaulting officer is "not held for pecuniary profit" and is exempt: *Gibson v. Howe*, 37-168.
- Water works in a city, which are

owned and operated by a private corporation, and which, by agreement with the city, furnish water for public use, including the extinguishment of fires, are not exempt from taxation as "fire engines": *Appeal of Des Moines Water Co.*, 48-324.

Church property leased for other purposes is subject to taxation. See § 1921.

PAR. 7. Previous to the enactment of this provision it was held that lands acquired from the government or state after the close of the assessment for the current year, were not liable to taxation for that year: *Des*

Moines N. & R. Co. v. County of Polk, 10-1; *Tallman v. Treasurer*, etc., 12-531.

Lands entered under the U. S. homestead law are not subject to taxation prior to the time when the occupant becomes entitled to a patent: *Moriarty v. Boone Co.*, 39-634.

The purchaser at tax sale of property exempt from taxation acquires no lien thereon for taxes voluntarily paid for subsequent years, although the property had passed to a third person who could not claim the exemption: *Byington v. Wood*, 12-479.

SEC. 798. For every acre of forest trees planted and cultivated for timber within the state, the trees thereon not being more than twelve feet apart and kept in a healthy condition, the sum of one hundred dollars shall be exempted from taxation upon the owner's assessment, for ten years after each acre is so planted; provided, that such exemption be applied only to the realty owned by the party claiming the exemption, not to exceed each one hundred and sixty acres of land, upon which the trees are grown and in a growing condition. For every acre of fruit trees planted and suitably cultivated within the state, the trees thereon not being more than thirty-three feet apart and kept in a healthy condition, the sum of fifty dollars shall be exempted from taxation upon the owner's assessment, for five years after each acre is planted. Such exemption shall be made by the assessor at the time of the annual assessment, upon satisfactory proof that the party claiming the same has complied with this section; and the assessor shall return to the board of equalization the name of each person claiming exemption, the quantity of lands planted to timber or fruit trees, and the amount deducted from the valuation of his property. Provided, that the amount so deducted shall not exceed one-half of the valuation of the realty on which such exemption is claimed.

[As amended by inserting the proviso at the end of the first sentence; 17th G. A., ch. 50, § 1; and by adding the proviso at the end of the section, 18th G. A., ch. 190.]

[SEC. 799, providing that the board of supervisors might exempt from taxation a greater amount than provided in the preceding section, on account of forest, fruit or shade trees or hedge, was amended by 15th G. A., ch. 45, and afterwards repealed by 17th G. A., ch. 50, § 2.]

The action of the board in granting exemptions can only be reviewed by injunction: *District Township, &c. v. Brown*, 47-25.

SEC. 800. The board of supervisors shall have power to rebate in whole or in part the taxes of any person whose buildings, crops, stock, or other property has been destroyed by fire, tornado, or other unavoidable casualty, if said property has not been sold for taxes or if said taxes have not been in default for thirty days at the time of destruction. But the loss for which such rebate is allowed shall be such only as is not covered by insurance.

[The original section repealed and the foregoing substituted, 15th G. A., ch. 66.]

Rebate in case
of destruction
of buildings,
crops, stock,
or other
property.
R. & 818.
Ex. S. 8, G. A.
ch. 12

Enumerated. SEC. 801. All other property, real and personal, is subject to taxation in the manner directed. Ferry franchises and toll-bridges, R. § 712. C. '51, § 456. 13 G. A. ch. 187. for the purposes of this title, are considered as real property. Horses, cattle, mules, asses, sheep, swine, and money, whether in possession or on deposit, and including bank bills, money, property, or labor due from solvent debtors on contract or on judgment, mortgages and other like securities, and accounts bearing interest, property situated in this state belonging to any bank, or company, incorporated or otherwise, whether incorporated by this or any other state, public stocks or loans, household furniture, including gold and silver plate, musical instruments, watches, and jewelry, private libraries, for their value exceeding three hundred dollars, carriages, threshing machines, and every description of vehicle, farming utensils, machines and machinery, mechanic tools, and professional libraries for their aggregate value over three hundred dollars, boats and vessels of every description, wherever registered or licensed, and whether navigating the waters of this state or not, if owned either wholly or in part by inhabitants of this state, to the amount owned in this state. Any and all lands in this state which are owned or held by any other county or counties claiming title under locations with swamp land indemnity scrip, or otherwise, shall be taxed the same as other real estate within the limits of the county.

[The words "mechanic tools," in the fourteenth line, as they stand in the original, are omitted in the printed code.]

WHAT PROPERTY IS TAXABLE: A valid legal title is not necessary to authorize taxation. Lands held by the United States in trust for grantees, are subject to taxation as property of such grantees: *Stockdale v. Treasurer, etc.*, 12-536.

Under the railroad land grant acts, by which upon the completion of a twenty mile section of road, the company became entitled to certain sections of public land as therein provided, *held*, that such land was taxable in the hands of the company from the time of the completion of the section of road, although certificates for it were not obtained until afterward: *Iowa Homestead Co. v. Webster Co.*, 21-221; *D. & P. R. Co. v. Same*, *id.* 235.

Mortgages held by non-residents are not taxable in this State: *City of Davenport v. M. & M. R. Co.* 12-539.

A purchase-money mortgage is not exempt from taxation. To tax such security is not, at least as to the person owning the mortgage, double taxation: *McGregor v. Vanpel*, 24-436.

Notes which are left in another state for safe keeping are still subject to taxation in this state to the owner residing here. The debts exist independently of the notes themselves, and follow the owner, though as to moneys and credits under the control

of an agent in another state for the purpose of investment for profit, the rule might be different. (See § 817): *Hunter v. Board of Supervisors*, 33-376.

TAXATION OF RAILWAY PROPERTY: Under the Code of 1851 (§ 462), by which the property of corporations was taxable only through the shares of stock of its stockholders, *held*, that land owned by a railroad company was not taxable as real property: *Tallman v. Treasurer, etc.*, 12-531; *D. & S. C. R. Co. v. City of Dubuque*, 17-120; and the same was held to be true under the act of 1858, ch. 152, § 7: *Faxton v. McCosh*, 1-527; *City of Davenport v. M. & M. R. Co.*, *id.* 531. Also *held*, that the provision of the Code of '51, that stock owned by non-resident stockholders in railroad and similar corporations in this state should be taxable in the county where either terminus of the road was situated, was valid: *Faxton v. McCosh*, 12-527.

Under the Revision (§ 712), the property of railroads was to be assessed and taxed in the same manner as the property of individuals: *Iowa Homestead Co. v. Webster Co.*, 21-221; *D. & P. R. Co. v. Same*, *id.* 235.

As to whether the track, depot grounds, buildings, etc., of a railway corporation, situated within the lim-

its of a city, were under 9th G. A., ch. 173, which imposed a tax of one per cent. upon the gross earnings in lieu of all taxes for any and all purposes, subject to *municipal* taxation, the supreme court were equally divided: *City of Davenport v. M. & M. R. Co.*, 16-348; *D. & S. C. R. Co. v. City of Dubuque*, 17-120.

But under 12th G. A., ch. 196, similar to the act last referred to, it was held that such property was subject to taxation for *municipal* purposes and that the one per cent. was only in lieu of state and county taxes: *Dunleith & Dubuque Bridge Co. v. City of Dubuque*, 32-427; *City of Davenport v. C. R. I. & P. R. Co.*, 38-633; *City of Dubuque v. C. D. & M. R. Co.*, 47-196; and that 14 G. A., ch. 26, § 9, by which it was sought to release railway companies from such taxes previously levied, was unconstitutional: *City of Dubuque v. Ill. Cent.*

SEC. 802. The term "credit" as used in this title, includes every claim and demand for money, labor, or other valuable thing, and every annuity or sum of money receivable at stated periods, and all money or property of any kind secured by deed, mortgage, or otherwise; but pensions of the United States, or any of them, and salaries or payments expected for services to be rendered, are not included in the above term.

SEC. 803. Every inhabitant of this state, of full age and sound mind, shall assist the assessor in listing all property subject to taxation in this state of which he is the owner, or has the control or management, in the manner hereinafter directed; the property of a ward is to be listed by his guardian, of a minor, by his father if living, if not, by his mother if living, and if not, by the persons having the property in charge; of a married woman, by herself or husband; of a beneficiary for whom property is held in trust, by the trustee, and the personal property of a decedent, by the executor; of a body corporate, company, society, or partnership, by its principal accounting officer, agent, or partner. Property under mortgage or lease is to be listed by and taxed to the mortgagor or lessor, unless it be listed by the mortgagee or lessee.

It is the duty of the mortgagor of real property to pay the taxes thereon: *Porter v. Lafferty*, 33-254; *Denton v. Rice*, 47-429.

While the *property* which is under mortgage or lease may be assessed to the mortgagor, the mortgage itself is to be assessed as personal property to the mortgagee, and if he be a non-resident it cannot be assessed in this state: *City of Davenport v. M. & M. R. Co.*, 12-539.

Where a purchaser of real estate under contract for a deed takes pos-

R. Co., 39-56.

As to whether, under the acts of 1862 and 1863, above referred to, the rolling stock of a railway corporation was subject to municipal taxation in the city where the company had its principal place of business, see the cases of *City of Davenport v. M. & M. R. Co.*; *D. & S. C. R. Co. v. City of Dubuque*, and *City of Dubuque v. Ill. Cent. R. Co.*, *supra*.

As to taxation of railway property under present law, see §§ 803, 81v, 1317-1323.

TAXATION OF LANDS HELD BY OTHER COUNTIES: The last sentence of the section (13 G. A., ch. 187) amounts to a declaration that such lands were not taxable before: *County of Guthrie v. County of Carroll*, 34-108.

TAXATION OF BANK STOCK: See § 818 and notes.

Definition of term "credit."
R. 3714.
C. '51, § 457.

How listed.
R. 3714.
C. '51, § 458.

session thereof, he is liable for the taxes thereon, and on subsequently taking the deed cannot require the vendor to covenant against such taxes: *Miller v. Corey*, 15-166.

The personal property of a decedent should, as a rule, be assessed in the county of which he died a resident, and not in the county where the executor resides: *McGregor's Ex'rs v. Vanpel*, 24-436.

As to the county in which personal property of decedent is to be assessed, see note to § 803.

Who deemed owners.
R. § 715.
C. 51, § 450.

When listed: in whose name.
R. § 716.
C. 51, § 461.

Where taxed: partnership property.
R. § 717.
C. 51, § 463.

Insurance companies: how taxed.
R. § 718.
C. 51, § 464.
12 G. A. ch. 138, § 38.
14 G. A. ch. 106, § 6.

Real property of railways.
14 G. A. ch. 26, §§ 8, 10.

Road beds and highways.
14 G. A. ch. 89.

SEC. 804. Commission merchants and all persons trading and dealing on commission, and assignees authorized to sell, when the owner of the goods does not reside in the county, are, for the purpose of taxation, to be deemed the owners of the property in their possession.

SEC. 805. Any person required to list property belonging to another, shall list it in the same county in which he would be required to if it were his own, except as herein otherwise directed, but he shall list it separately from his own, giving the assessor the name of the person or estate to whom it belongs; but the undivided property of a person deceased, belonging to his heirs, may be listed as belonging to his heirs without enumerating them.

SEC. 806. When a person is doing business in more than one county, the property and credits existing in any one of the counties shall be listed and taxed in that county, and the credits not existing in or pertaining especially to the business in any county, shall be listed and taxed in that where the principal place of business may be. Any individual of a partnership is liable for the taxes due from the firm.

[The word "in" in the fourth line, preceding "or," is omitted in the printed code.]

SEC. 807. Every insurance company doing business in this state, except joint stock and mutual companies organized under the laws of this state, shall, at the time of making the annual statements as required by law, pay into the state treasury as taxes, two and one-half per cent. of the gross amount of premiums received in this state during the preceding year, taking duplicate receipts therefor, one of which shall be filed with the auditor; and upon the filing of said receipts, and not till then, the said auditor shall issue the annual certificate as provided by law; and the said sum of two and one-half per cent. shall be in full for all taxes, state and local.

SEC. 808. Lands, lots, and other real estate belonging to any railway company, not exclusively used in the operation of the several roads, and all railway bridges across the Mississippi and Missouri river, shall be subject to assessment and taxation on the same basis as the property of individuals in the several counties where situated.

The right of the C. R. I. & P. R. Co. to use the government bridge over the Mississippi river at Davenport, held, not taxable, except as railroad property under § 1317: *C. R. I. & P. R. Co. v. City of Davenport*, 51-451. As to taxation of railway property generally, see notes to § 801.

SEC. 809. No real estate used by railway corporations for road-beds shall be included in the assessment to individuals of the adjacent property, but all such real estate shall be deemed to be the property of such companies for the purpose of taxation; nor shall real estate, occupied for and used as a public highway, be assessed and taxed as a part of adjacent lands whence the same was taken for such public purpose.

SEC. 810. All railway property not specified in section eight hundred and eight of this chapter, shall be taxed upon the assess-

ment made by the executive council as provided in chapter five of title ten, at the same rates, by the same officers, and for the same purposes as individual property under the provisions of this chapter; and all provisions of this title relating to the levy and collection of taxes shall apply to the taxes so levied upon railway property.

Under the act of 1858 (7th G. A. ch. 152) which made the property of railway corporations taxable through their shares of stock only, it was held that real property inside a city, owned by the company and used as depot

grounds, was liable for sidewalk tax: *B. & M. R. R. Co. v. Spearman*, 12-112.

As to taxation of railway property generally, see notes to § 801.

SEC. 811. All property, real and personal, including their franchises, owned by telegraph and express companies, shall be listed and assessed for taxation and shall be subject to the same levies as the property of individual.

SEC. 812. All taxable property shall be taxed each year, and personal property shall be listed and assessed each year in the name of the owner thereof on the first day of January; except moneys and credits of associations, organized under the general incorporation laws of this state, for the purpose of transacting a banking business, and moneys and credits of private bankers, and others who have loaned money, bought notes mortgages, or other securities within the year previous to the time of assessing; in every such instance the average value of the moneys and credits which have been in the possession or under the control of the person making the list during the year previous to the time of making said assessment, shall be listed for taxation. Real property shall be listed and valued in the year eighteen hundred and seventy-three and each second year thereafter, and shall be assessed at its true cash value, having regard to its quality, location, and natural advantages, the general improvement of the vicinity, and all other elements of its value; and in each year in which real estate is not regularly assessed, the assessor shall list and value any real property not included in the previous assessment.

[As amended by 15th G. A. ch. 63, which added the exception as to moneys and credits of banking associations.]

A person should not be assessed, for any year, upon personal property not owned by him on the first day of January of such year: *Tackaberry v. City of Keokuk*, 32-155.

The location of personal property on the first of January does not determine what township it is to be taxed in, under § 823: *Rhyno v. Madison Co.*, 43-632.

On even numbered years the assessor should not assess, and need not list real property assessed the preceding year: *Snell v. City of Fort Dodge*, 45-564, 567.

Improvements made upon real estate during the first year after an assessment cannot be taxed until the next regular assessment, although the personal property of the owner

Railway property: how assessed and taxed.

14 G. A. ch.
26, §§ 6, 7.

Telegraph and express companies.

12 G. A. ch. 180.

13 G. A. ch. 100.

When, and in whose name assessed.

R. §§ 719, 720.

C. '51, 22 460.

463.

Assessment of moneys and credits of bankers.

subject to taxation is decreased by that much, notwithstanding the provision that "all taxable property shall be taxed each year;" the enhanced value of real estate should not be regarded as taxable property until the real estate is assessed in the manner provided: *Richards v. Wapello Co.*, 48-507.

The clause of the section as amended "the average value of the moneys and credits which have been in the possession or under the control of such person * * * shall be listed for taxation," does not authorize the assessor to assess against a bank the average of deposits during the preceding year: *Branch v. Town of Marengo*, 43-600.

SEC. 813. Depreciated bank notes, and the stock of corpora-

Money, credits, bank notes, and stock: how estimated. shall be listed at such sum as the person listing them believes will be received or can be collected thereon, and annuities, at the value which the person listing believes them to be worth in money.
R. § 721.
C. 51, § 466.

The real property of a private corporation is to be assessed under § 223. The shares of stock of such companies are, under this section taxable in the hands of the owners thereof. Whether both shares and property may be taxed, and whether that would amount to double taxation, *quære: Appeal of the Des Moines Water Co.* 48-324.

[Sixteenth General Assembly, Chapter 163.]

Building Associations: shares of stock assessed at cash value. SEC. 1. The shares of stock of mutual loan and building associations shall be assessed at their cash value, but only the unredeemed shares of such stock shall be taxed and such unredeemed shares shall be listed to the individual owners thereof.

Debts owing, to be deducted from credits. R. § 722.
C. 51, § 467.
13 G. A. ch. 181.

SEC. 814. In making up the amount of money or credits which any person is required to list, or have listed and assessed, he will be entitled to deduct from the gross amount, all debts in good faith owing by him, but no acknowledgment of indebtedness not founded on actual consideration, and no such acknowledgment made for the purpose of being so deducted, shall be considered a debt within the intent of this section, and so much only of any liability of such person as security for another shall be deducted, as the person making the list believes he is equitably or legally bound to pay, and so much only as he believes he will be compelled to pay on account of the inability of the principal debtor, and if there are other sureties able to contribute, then so much only as he in whose name the list is made will be bound to contribute; but no person will be entitled to any deduction on account of any obligations of any kind given to any insurance company for the premiums of insurance, nor on account of any unpaid subscription to any institution, society, corporation, or company; and no person shall be entitled to any deduction on account of any indebtedness contracted for the purchase of United States bonds, or other non-taxable property.

This provision allowing the deduction of debts is not in conflict with local or special laws for the assessment or collection of taxes: *Macklot v. City of Davenport*, 17-379.

Who held to be a merchant. R. § 723.
C. 51, § 468.

SEC. 815. Any person owning, or having in his possession, or under his control, within this state, with authority to sell the same, any personal property purchased with a view of its being sold at a profit, or which has been consigned to him from any place out of this state to be sold within the same, shall be held to be a merchant for the purposes of this title; such property shall be listed for taxation, and in estimating the value thereof, the merchant shall take the average value of such property in his possession or under his control during the next year previous to the time of assessing, and if he has not been engaged in the business so long, then he shall take the average during such time as he shall have been so engaged, and if he be commencing, he shall take the value of the property at the time of assessment.

A person engaged in buying and packing pork is a merchant within the meaning of this section, and the fact that the property is held with a

view of selling it out of the state, does not affect the liability of the owner to taxation upon such property. The fact that the property was purchased on credit or on borrowed capital, will

not relieve the owner from taxation thereon. His debts can only be deducted from his moneys and credits under § 814: *McConn v. Roberts*, 25-152.

SEC. 816. Any person who purchases, receives, or holds personal property of any description for the purpose of adding to the value thereof by any process of manufacturing, packing of meats, refining, purifying, or by the combination of different materials, with a view of making gain or profit by so doing, and by selling the same, shall be held to be a manufacturer for the purpose of this title, and he shall list for taxation the average value of such property in his hands, estimated as directed in the preceding section; but the value shall be estimated upon those materials only which enter into the combination or manufacture.

Who a manufacturer.
R. 3724.
C. 31, 7 469.

[Eighteenth General Assembly, Chapter 57.]

SEC. 1. Corporations organized under the laws of this state for pecuniary profit, and engaged in manufacturing as defined by section 816 of the code, and which have their capital represented by shares of stock, shall, through their principal accounting officers, list their real estate, personal property, and moneys and credits, in the same manner as is required of individuals; and their machinery used in their manufacturing establishments shall, for the purposes of this act, be regarded as real estate.

SEC. 2. The owners of capital stock of manufacturing companies, as herein provided for, having listed their property as above directed, shall be exempt from assessment and taxation.

SEC. 817. Any person acting as the agent of another, and having in his possession, or under his control or management, any money, notes, credits, or personal property belonging to such other person with a view to investing or loaning, or in any other manner using the same for pecuniary profit, shall be required to list the same at the real value, and such agent shall be personally liable for the tax on the same; and if he refuse to render the list, or to swear to the same, the amount of such money, property, notes, or credits, may be listed and valued according to the best knowledge and judgment of the assessor, subject to the provisions of section eight hundred and twenty-four of this chapter.

[The word "and" standing in the printed code between "notes" and "credits" is not in the original.]

See *Hunter v. Board of Supervisors*, 38-376; cited in notes to § 801.

BANKING ASSOCIATIONS.

How assessed
and taxed.
12 G. A. ch. 153,

SEC. 818. All shares of the banking associations organized within this state, pursuant to the provisions of the acts of congress to provide a national currency secured by a pledge of United States stocks, and to provide for the circulation and redemption thereof, held by any person or body corporate, shall be included in the valuation of the personal property of such person or body corporate in the assessment of taxes in the township, incorporated town, or city, where such banking association is located and not elsewhere, whether the holder thereof resides there or not, but not at a greater rate than is assessed on other moneyed capital in the hands of individuals.

[The word "provide" in the third line, as in the original, is "procure" in the printed code.]

11th G. A., ch. 103, providing for the taxation of shares in national banks, was held inoperative for the reason that the capital, and not the shares of stock of state banking institutions were, under Rev., § 1598, subject to taxation, and therefore, under the act of congress (June 3, 1864, § 41, which provided that shares in national banks should not be taxed at a higher rate than the shares of banks organized under the authority of the state), shares of stock in national banks could not be taxed: *Hubbard v. Board of Supervisors, &c.*, 23-130; *Olmstead v. Board of Supervisors, &c.*, 24-3); but 12 G. A., ch. 153 (§ 4 of which repealed all acts and parts of acts inconsistent therewith), was held to repeal Rev., § 1598, and render the *shares* in state

banks subject to taxation, and its provisions, therefore, not in conflict with the act of congress above referred to (as then amended by the act of Feb. 10, 1868), and such repeal was held not in conflict with art. 8, § 5 of the constitution, for the reason that the latter is only applicable to acts authorizing or creating corporations, etc., with banking powers, and amendments thereto, and not to acts repealing the same: *Morseman v. Younkin*, 27-350.

Under the act of congress referred to in this section, the shares of stock and the real estate of national banks are alone subject to taxation. Personal property belonging to such associations cannot be taxed: *National State Bank, &c. v. Young*, 25-311.

- List: by whom made: associations responsible for tax. Same, § 2.

SEC. 819. The principal accounting officer of each of said associations, between the first and fifteenth days of January of each year, shall list the shares of the association, giving the assessor the name of each person owning shares, and the amount owned by each; and for the purpose of securing the collection of taxes assessed upon said shares, each banking association shall be liable to pay the same as the agent of each of its shareholders, under the provisions of section eight hundred and seventeen; and the association shall retain so much of any dividend belonging to any shareholder as shall be necessary to pay any taxes levied upon his shares.

The assessment against a shareholder does not authorize the seizure of property of the bank for its liquidation: *First National Bank, &c. v. Hershire*, 31-18.

The bank is not absolutely liable

for the taxes upon shares, but to render it liable it must be shown that it has, or has had dividends or other money or property belonging to the delinquent shareholder: *Hershire v. First National Bank, &c.*, 35-272.

- Acts of congress amended. Same, § 3.

SEC. 820. If, at any time, congress shall amend the acts aforesaid, then each assessor shall assess the shares in any such national bank in such manner as to conform to such amended act of congress; provided, that such shares shall not be assessed at a greater rate than is imposed by law on other moneyed capital in the hands of individuals in this state.

CLASSIFICATION OF PROPERTY.

When, by whom, and how classified. R. 2 § 732, 733, 9 G. A. ch. 173, 24, 5.

SEC. 821. The board of supervisors of each county, shall, at their meeting in January in each year, classify the several descriptions of property to be assessed, for the purpose of equalizing such assessment; and the county auditor shall deliver to each assessor in the county, on or before the fifteenth day of January in each year, a certificate of such classification, together with a suitable plat of his township on which to check each parcel of land assessed, and suitable books in duplicate, properly ruled and headed, in which to enter the following items:

1. The name of the individual, corporation, company, society, partnership, or firm, to whom any property shall be taxable;
2. His or their lands, by township, range, section, or part of section, and when such part is not a congressional division or subdivision, some other description sufficient to identify it; and town lots, naming the town in which they are situated, and their proper description by number and block, or otherwise, according to the system of numbering in the town;
3. Personal property as follows: number of cattle, number of horses, number of males, number of sheep, number of swine over six months old, number of carriages and vehicles of every description, with a separate column for the value of each; value of merchandise, amount of capital employed in manufacture, amount of money and credits, amount of taxable furniture, amount of stock or shares in any corporation or company, not required by law to be otherwise listed and taxed, amount of taxable farming utensils or mechanics' tools, amount of all other personal property not enumerated, and the number of polls; and a column for remarks. But no entry shall be made on said books of any animal under the age of one year, except as above provided.

The obvious purport of this section is that like property should be put in the same class: *Cassett v. Sherwood*, 42-623.

A town lot, entered upon the assessment books by description, carries with it mains, pipes, etc., of water or

gas works situated thereon, as appurtenances, although such mains and pipes extend beyond such lot, or even into another township: *Appeal of the Des Moines Water Co.*, 48-324; *Capital City G. L. Co. v. Charter Oak Ins. Co.*, 51-31.

DUTY OF ASSESSOR.

SEC. 822. Each assessor shall enter upon the discharge of the duties of his office on the third Monday in January in each year, and shall, with the assistance of each person assessed, or who may be required by law to list property belonging to another, enter in the books furnished him for that purpose, the several items specified in the preceding section; entering the names of the persons assessed in alphabetical order, so far as practicable by allotting to each letter its requisite number of pages in each of the said books. He shall note opposite each piece or parcel of property by him assessed, in a column of his book prepared for that purpose, the number of the highway, independent school districts, district township, or sub-district in which said property is situated.

The clerical duty of listing may be performed by a person employed by the assessor. See note to next section.

SEC. 823. The assessor shall list every person in his township, and assess all the property, personal and real, therein, except such as is heretofore specifically exempted; and any person who shall refuse to assist in making out a list of his property, or of any property which he is by law required to assist in listing, or who shall refuse to make the oath required by the next section, shall forfeit the sum of one hundred dollars, to be recovered in the name of the county for the use of common schools therein; and the assessor shall assess each person according to the best information he can get.

When to begin;
how to list
property.
R. § 733.
C. § 51, § 471.
Same, § 15.

Assess value.
penalty for re-
fusal to take
oath.
R. § 734.

The assessment is not invalid although the assessor employ another to make the valuations of property if they are afterwards submitted to him for correction and approval, and it is no objection that the mere clerical duty of listing was performed by another: *Snell v. City of Fort Dodge*, 45-564.

The assessor should not assess and need not list real property assessed the preceding year: *Ibid.*

The real property of a private corporation for pecuniary profit is taxable as other property, and the shares of stock in such companies are also taxable under § 813; whether both may be taxed at once and whether that would be double taxation, *quare: Appeal of the Des Moines Water Co.*, 48-324.

As to the taxation of property of

companies owning water works, see same case under § 471.

The rule as to the place of taxing movable property is hard to fix, but it is not a correct rule that such property is to be taxed in the township where it is on the first of January: § 812 applies only as to ownership: *Rhyno v. Madison Co.*, 43-632.

If a person is requested to make oath as provided and refuses he is liable for the forfeiture. It is not necessary that the oath be actually administered to him, and he cannot escape liability by showing irregularities in the qualification of the assessor, if the officer was such *de facto*. The fact that the assessor was such officer and was acting in that capacity may be established by his own testimony: *Washington Co. v. Miller*, 14-584.

Same.
R. & 735.
C. 51, §§ 474-5.

SEC. 824. The assessor shall administer an oath, or affirmation, to each person assessed, to the effect that he has given in a full, true, and correct inventory of all the taxable property owned by him, and all property which he is required by law to list, to the best of his knowledge and belief; and in case any one refuses to make such oath, or affirmation, the assessor shall note the fact in the column of remarks opposite such person's name, and should it afterwards appear that such person so refusing has not given a full list of his property, or that which he was by law required to list, any property so omitted shall be entered on the book at double its ordinary assessable value, and taxed accordingly.

[Eighteenth General Assembly, Chapter 109.]

Notify person assessed of the valuation put upon his property.

Deliver books to township clerk and county auditor. R. & 736. C. 51, § 478. 11 G. A. ch. 61, § 10.

SEC. 2. The assessor shall, before administering the oath or affirmation, as is provided in section 824 of the code, to the person assessed, inform him of the valuation put upon his property, and notify him that if he feels aggrieved to appear before the board of equalization, and show why the assessment should be changed.

SEC. 825. Each assessor shall, on or before the first Monday in April of each year, deliver to the clerk of his township, one of the assessment books, to be used by the trustees for the equalization of assessments, and for the levy of taxes for township and highway purposes. Said book shall have the several columns of numbers and values correctly footed up, and amount of personal property assessed to each person carried forward into a column under the head of "total personal property"; the other book he shall return to the office of the county auditor, on or before the third Monday in May of each year, which book shall be a correct copy of the first, after the same has been corrected by the township board of equalization.

Real estate not liable to assessment at the time the assessment is closed, should be passed without assessment for that year: *Sully v. Poorbaugh*, 45-453; *D. M. N. & R. Co. v. County of Polk*, 10-1; *Tallman v. Treasurer of Butler Co.*, 12-531.

Owner unknown. R. & 737.

SEC. 826. When the name of the owner of any real estate is unknown, it shall be lawful to assess such real estate without con-

necting therewith any name, but inscribing at the head of the page the words, "owners unknown;" and such property, whether lands or town lots, shall be listed, as near as practicable, in the order of the numbers thereof; and no one description shall comprise more than one town lot, or more than the sixteenth part of a section or other smallest subdivision of the land according to the government surveys, except in cases where the boundaries are so irregular that it cannot be described in the usual manner in accordance with such surveys.

The fact that real estate is assessed to "unknown owner" does not render the assessment void, even though the records disclose the name of the owner. See § 852: *Corning Town Co. v. Davis*, 44-622, 631.

Where the same tract is assessed to "unknown owner" and also in the

name of the real owner, the former assessment is invalid and a sale thereunder void: *Nichols v. McGlathery*, 43-189.

Land of known owner need not be assessed in forties, but may be assessed in a body: *Corbin v. De Wolfe*, 25-124; *Bukley v. Callanan*, 32-451.

SEC. 827. If any assessor shall fail or neglect to perform any of the duties required of him by this chapter, at the time and in the manner specified, he shall be liable to a fine of not less than twenty nor more than five hundred dollars, to be recovered in an action brought in the district court, in the name of the county, and the judgment shall be against him and his bondsmen.

SEC. 828. The auditor of state is hereby authorized and required to cause to be published, in pamphlet form, the revenue laws of this state, for the benefit of township assessors; and shall cause the same to be distributed to the county auditors, who shall distribute the same to the township assessors of their respective counties.

Penalty for failure of duty.
R. & 738.

Auditor of state to publish revenue laws.
11 G. A. ch. 61,
§ 11.

TOWNSHIP BOARD OF EQUALIZATION.

SEC. 829. The township trustees shall constitute a board of equalization for their respective townships, and have power to equalize the assessments of all tax-payers within the same, except in such cities and incorporated towns as elect a township assessor, in which case the city council shall be the board of equalization, and shall perform such duties in substantially the same manner, as is required of a township board of equalization, by increasing or diminishing the valuation of any piece of property, or the entire assessment of any tax-payer, as they may deem just and necessary for an equitable distribution of the burden of taxation upon all the property of the township; provided, that such boards shall keep a record of their proceedings.

The township board possesses the power to equalize the assessments of persons to the same extent as it was possessed by the board of supervisors under Rev. § 739: *Keck v. Board of Supervisors, &c.*, 37-547.

The board of equalization for the even-numbered years is to act upon the assessments of real property as made the previous year, and for that purpose need not have before them the assessor's books for the current year: *Snell v. City of Fort Dodge*, 45-564, 567.

The provisions of this section as to cities, &c., do not apply to cities acting under special charter; *arguendo*: *The State v. Finger*, 46-25.

The irregular exercise of the powers here conferred upon the city council will not deprive a party of the right of appeal under § 831: *Ingersoll v. City of Des Moines*, 46-553.

Under Rev. § 739, which gave the board of supervisors authority to equalize the assessments of individuals, held, that they might raise or lower the assessments of particular

persons when they *believed* that the assessment was too low or too high; and that, while they might properly receive evidence before doing so, they were not required to receive evidence in all cases, and that their discretion in such matter could not be controlled by proceedings under writ of *certiorari*, but only upon appeal, if at all: *Smith v. Board of Supervisors*, 30-531.

Time of meeting: duties.
Same, § 2.

SEC. 830. Said board shall meet for that purpose at the office of the township or city clerk on the first Monday in April of each year, and continue from day to day until completed; and at such meeting they may also add to the assessment as returned by the assessor, any taxable property in the township, city, or incorporated town, not included therein, placing the same to the name of the owner, if known, and assessing the value thereof.

Where the board of supervisors were given similar powers (under Rev. § 739, and Ex. Sess. 8 G. A. ch. 24, § 3), which were to be exercised at their "June meeting," held, that the provision specifying the meeting was directory only and that the exercise of the power at a subsequent meeting was not void: *Easton v. Steery*, 44-654, 658; *Hill v. Wolfe*, 28-577.

[Eighteenth General Assembly, Chapter 109.]

Give notice of meeting for the purpose of raising assessments.

SEC. 3. At the first meeting of the board of equalization of any township, town or city, they shall decide what assessment should in their opinion be raised and make an alphabetical list of names of the individuals whose assessment it is proposed to raise, and post a copy of the same in a conspicuous place in the office or place of meeting of said board, and also in each post office located in said township, town or city, and the board shall, if, in their opinion, some assessments should be raised, hold an adjourned meeting, with at least one week intervening after posting said notices, before final action thereon, which notices shall state the time and place of holding such adjourned meeting.

May correct assessment:
appeals.
R. § 740.
12 G. A. ch. 92,
§ 4, 13 G. A. ch.
89, § 3.

SEC. 831. Any person who may feel aggrieved at anything in the assessment of his property, may appear before said board of equalization in person, or by agent, at the time and place mentioned in the preceding section, and have the same corrected in such manner as to said board may seem just and equitable, and the assessors shall meet with said board and correct the assessment books as they may direct. Appeals may be taken from all boards of equalization to the circuit court of the county where the assessment is made, within sixty days after the adjournment of such board of equalization, but not afterward.

[As amended by 18th G. A., ch. 109, § 1, adding the clause limiting the time within which an appeal may be taken.]

The proper remedy for an erroneous and excessive assessment, is by application to the board of equalization and not by injunction. But in case the law authorizing the tax is unconstitutional or the levy is without authority or jurisdiction, other remedies may be pursued: *Macklot v. City of Davenport*, 17-379.

A party may by mandamus compel the board to act, but their discretion cannot be controlled by such action: *Meyer v. City of Dubuque*, 43-192.

It is the duty of the assessor to

enter upon the assessment books any correction therein made by the board of equalization, and where he fails to do so and the books pass into the hands of the auditor, an action by *certiorari* will lie to correct such error: *Keck v. Board of Supervisors, etc.*, 37-547.

No time is fixed within which to take an appeal, and no bond is required: *Ingersoll v. City of Des Moines*, 46-553.

Upon an appeal by a person seeking to have his assessment reduced, the only question to be determined is,

whether he has just cause to complain of the action of the board, and it is error for the circuit court in such case to increase the assessment as fixed by such board: *Appeal of the Des Moines Water Company*, 48-324. *Certiorari* will lie from the action of the county board when it exceeds its jurisdiction: *Royce v. Jenney*, 50-6:6.

COUNTY BOARD OF EQUALIZATION.

SEC. 832. The board of supervisors shall constitute a county board of equalization, and shall equalize the assessments of the several townships, cities and incorporated towns of their county, at their regular meeting in June of each year, substantially as the state board equalize assessments among the several counties of the state.

The board may equalize by adding to or deducting from, the valuation of *different classes of property* in the different townships as well as by increasing or diminishing the aggregate valuation of *all the property* therein: *Harney v. Board of Supervisors, &c.*, 44-203.

While the township trustees have power to equalize assessments of taxpayers within their township, yet the board of supervisors may overrule their action for the purpose of securing uniform taxation throughout the county upon the different classes of property. See § 821: *Cassett v. Sherman*, 42-623.

The action of the county board of equalization can only be reviewed upon appeal or by *certiorari*, not by injunction: *Macklot v. City of Davenport*, 17-379; *District Tp., &c., v. Brown*, 47-25.

The board has no power to raise or lower the assessment of an individual

tax-payer: *Royce v. Jenney*, 50-676, and a tax based thereon is void: *Rood v. Board of Supervisors, etc.*, 39-444.

The board of supervisors have no jurisdiction to determine the right of a municipal corporation to assess taxes, and they cannot remit taxes on the ground of absence of such right: *District Township, &c., v. Monroe*, 39-605.

Where two townships, being included within the corporate limits of a city, constitute but one assessorial district, the board has no authority to increase the assessment of one of such townships. It may only equalize as between different assessorial districts: *Getchell v. Board of Supervisors, etc.*, 51-107.

The power of equalizing assessments of individuals, and that of adding new assessments to the lists are omitted. (See §§ 829, 851): *Code Com'r's Rep.*

Sec. 833. Each county auditor shall, on or before the third Monday in June in each year, make out and transmit to the auditor of state, an abstract of the real and personal property in his county, in which he shall set forth:

1. The number of acres of land in his county, and the aggregate value of the same, exclusive of town lots, returned by the assessors as corrected by the county board of equalization;

2. The aggregate value of real property in each town in the county, returned by the assessor as corrected by the county board of equalization;

3. The aggregate value of personal property in his county;

4. An abstract of the aggregate value and number of cattle, the aggregate value and number of horses, the aggregate value and number of mules, the aggregate value and number of sheep, the aggregate value and number of swine over six months old, as the same are returned by the assessors of his county.

County auditor
to send ab-
stract to au-
ditor of state.

R. § 741.
9. G. A. ch. 173,
§ 6.

STATE BOARD OF EQUALIZATION.

Who compose: Who compose: board of equalization, and shall meet at the seat of government where and when to assess: on the second Monday of July in each year in which real property duties. R. § 742. C. 51, § 481-2. is assessed. The auditor of state shall be clerk of the board by virtue of his office, and shall lay before it the abstracts transmitted to him by the county auditors, as required by the preceding section, and then the board shall proceed to equalize the valuation of real property among the several counties and towns in the following manner:

1. They shall add to the aggregate valuation of real property of each county, which they shall believe to be valued below its proper valuation, such percentage in each case as will raise the same to its proper valuation;

2. They shall deduct from the aggregate valuation of real property of each county, which they shall believe to be valued above its proper valuation, such percentage in each case as will reduce the same to its proper valuation.

The state board has no power to | *v. Board of Supervisors, &c., 44-203.*
equalize personal property: *Harney* |

Determine
rate of state
tax.
R. § 743.
Ex. S. 8 G. A.
ch. 24, § 1.
When to com-
plete duties.
R. § 743.
C. 51, § 483.

SEC. 835. The state board shall also determine each year, at the same time, the rate of state tax to be levied and collected, not exceeding two mils on the dollar.

SEC. 836. Said board shall keep a full record of their proceedings, and they shall finish their equalization on or before the first Monday of August, immediately after which the auditor of state shall transmit to each county auditor, a statement of the percentage to be added to, or deducted from the valuation of real property in his county, and a statement of the rate of state tax fixed as aforesaid. The county auditor shall add to or deduct from the valuation of each parcel of real property in his county the required percentage; rejecting all fractions of fifty cents or less in the result, and counting all over fifty cents as one dollar.

AUDITORS SHALL TRANSMIT ASSESSMENTS.

How.
R. § 745.
C. 51, § 486.

SEC. 837. After the equalization in June, hereinbefore provided, and before the first Monday in November, the county auditor shall transcribe the assessments of the several townships into a suitable book to be provided at the expense of the county, properly ruled and headed with distinct columns, in which shall be entered the names of tax-payers, descriptions of lands, number of acres and value, number of town lots and value, value of personal property, and each description of tax, with a column for polls and one for payments.

Where the collection of a road tax was authorized, but owing to a change in the method of assessment of railway corporations, no one was authorized to put the tax for a certain year upon the tax list, held (under Rev., § 745), that such duty devolved upon the clerk of the board of supervisors:

*M. & S'. P. R. Co. v. Coun'y of Kos-
suth*, 41-57, 66.

The provision as to entering lands of unknown owners by smallest subdivision, &c., is contained in § 826, and is therefore omitted here: *Code Com'r's Rep.*

SEC. 838. All taxes which are uniform throughout any civil township or independent school district, shall be formed into a single tax, entered upon the tax list, in a single column, and denominated a consolidated tax; and each tax-receipt shall show the percentage levied for each separate fund.

Consolidated tax.
13 G. A. ch. 128,
§ 1.

LEVY.

SEC. 839. At the regular meeting in September in each year, the board of supervisors shall levy the requisite tax for the current year in accordance with law, and shall record the same in the proper book, and the county auditor shall, as soon as practicable, complete the tax-list by carrying out in a column by itself the consolidated tax, highway tax, polls, irregular tax, if any be levied, and total tax, and after adding up each column of said taxes, he shall, in his abstract at the end of each township, incorporated town, or city list, apportion the consolidated tax among the respective funds to which it belongs, according to the number of mills levied for each of said funds, showing a summary of the total amount of each distinct tax.

Time for making:
entered of record.
R. § 746.
C. 51, § 485.
Same, § 2.

It is not competent to prove the fact of levy by parol evidence where none appears of record: *Moore v. Cook*, 40-290.

meeting at which it should have been made, *held*, that a tax sale thereunder was not void, the statute being only directory and no prejudice having resulted to the party complaining:

Where the board made a levy at the general meeting preceding the *Easton v. Savery*, 44-654.

SEC. 840. It shall not be lawful for the board of supervisors of any county, to levy taxes in any one year for the payment of bonded indebtedness, except as provided in section two hundred and ninety-one, chapter one, title four of this code, including judgments founded on such indebtedness, of more than three mills on the dollar upon the last corrected valuation. But this shall not be construed to reduce the rate of taxation below the rate fixed for one year, in any county in which a specific rate was fixed by the vote of such county authorizing the issue of such bonds.

To pay bonds.
indebtedness.
10 G. A. ch. 124,
§ 1.

SEC. 841. The county auditor may correct any clerical or other error in the assessment or tax book, and when such correction, affecting the amount of tax, is made after the books shall have passed into the hands of the treasurer, he shall charge the treasurer with all sums added to the several taxes, and credit him with all the deductions therefrom and report the same to the supervisors.

Errors cor-
rected by audi-
tor.
R. § 747.

Where the assessor omitted to insert in his list the name of one of two joint owners of property; *held*, that the assessment book might properly be corrected in that respect: *Conway v. Younkin*, 28-295.

assessment or tax book as to the valuation of property there must be an error or mistake shown. An averment that the valuation was not *fair* or *reasonable*, is not sufficient to justify a change: *Jones v. Tiffin*, 24-190.

To authorize a correction in the as-

TAX BOOK AND LIST.

SEC. 842. The county auditor, when making up the tax-book of the county and before said book is placed in the hands of the

Auditor to make: form of
12 G. A. ch. 75,
§ 1.

county treasurer for collection of the taxes therein, shall designate each piece or parcel of real estate sold for taxes and not redeemed, by writing in a plain manner opposite to each such piece the word "sold."

A failure of the officer to so designate a parcel as sold and not redeemed when he should do so, does not affect the sale previously made: *Playter v. Cochran*, 37-258.

Treasurer's authority: Informality.
R. § 748.
C. '51, § 487.

SEC. 843. The county auditor shall make an entry upon the tax-list showing what it is, and for what county and year it is, and shall then deliver it to the county treasury on or before the first day of November, taking his receipt therefor; and such list shall be full and sufficient authority for the county treasurer to collect taxes therein levied. But no informality therein, and no delay in delivering the same after the time above specified, shall affect the validity of any taxes, or sales, or other proceedings for the collection of taxes under this title.

The tax list is a complete protection to the treasurer in making distress and sale thereunder. See § 857 and note.

The tax warrant provided for under the corresponding section of the Revision (§ 748) was held not essential, the power of the treasurer to sell being derived from the statute directly:

Parker v. Serton, 29-421; *Johnson v. Chase*, 30-303; *Hurley v. Poucell*, 31-64; *Rhoies v. Sexton*, 33-540; *Madson v. Sexton*, 37-162; *C. R. & M. R. R. Co. v. Carroll Co.*, 41-153; and therefore the provision in relation to the warrant is omitted in the code: *Code Com'r's Rep.*

Aggregate certificate to auditor of state.
R. § 748.

SEC. 844. At the time of the delivery of said list to the treasurer, the auditor shall make to the auditor of state a certified statement showing the aggregate valuation of lands, town property, and personal property in the county, each by itself, and also the aggregate amount of each separate tax as shown by said tax book.

DUTY OF TREASURER.

To enter taxes unpaid for previous years:
sale void.
R. § 750.
C. '51, § 488.

SEC. 845. The treasurer, on receiving the tax book for each year, shall enter upon the same in separate columns, opposite each parcel of real property or person's name, on which, or against whom any tax remains unpaid for either of the preceding years, the year or years for which such delinquent tax so remains due and unpaid. And any sale for the whole or any part of such delinquent tax, not so entered, shall be invalid.

Personal tax which is a lien upon the realty as well as real property tax is to be brought forward: *Cummings v. Easton*, 46-183, 185.

The right to enforce a performance of the duty of entering upon the tax books taxes remaining unpaid for

preceding years cannot be barred so long as the right to enforce the taxes exists; so held in an action to compel the treasurer to enter up and collect a railroad aid tax voted under 12 G. A., ch. 48: *Harwood v. Brownell*, 48-657.

[Fifteenth General Assembly, Chapter 29.]

Neglect to bring forward: penalty to be remitted.

SEC. 1. In all cases where the county treasurer in any county in this state has neglected for the term of four years, or more, to bring forward the delinquent taxes on personal property, on the tax-books, as required in section 845, chapter 1, title VI of the code, or has for four years or more neglected to collect said tax by distress and sale of personal property or real estate, upon which

said tax is a lien, it shall be the duty of the board of supervisors of the county to remit all of the penalties and interest that may have accrued on such delinquent taxes, on the payment by the person liable for the same of the original amount of such tax.

This statute does not release the treasurer from liability for not collecting such taxes, and is not therefore void as impairing the obligation of contracts. Nor is the statute a special law for the assessment and collection of taxes within the meaning of Art. 3, § 30, of the Const. Nor is the statute void as against public policy as encouraging delinquencies in the payment of taxes: *Beecher v. Board of Supervisors*, 50-538.

SEC. 846. The treasurer, after making the above entry, shall proceed to collect the taxes, and the list shall be his authority and justification against any illegality in the proceedings prior to receiving the list; and he is also authorized and required to collect, as far as practicable, the taxes remaining unpaid on the tax books of previous years.

SEC. 847. Each county treasurer shall, when any person offers to pay taxes on any real estate marked "sold" notify such person that such property has been sold for taxes, and inform him for what taxes said property was sold, and at what time said sale was effected.

The neglect of the treasurer to thus notify a party paying taxes does not affect a sale already made nor author-

ize a redemption therefrom after the time for redemption has expired: *Playter v. Cochran*, 37-258.

SEC. 848. The county treasurer shall certify, in writing, the entire amount of taxes and assessments due upon any parcel of real estate, and all sales of the same for unpaid taxes or assessments shown by the books in his office, with the amount required for redemption from the same, if still redeemable, whenever he shall be requested so to do by any person having any interest in said real estate, and paid or tendered his fees for such certificate at the rate of fifty cents for the first parcel in each township, incorporated town, or city, and ten cents for each subsequent parcel in the same township, town or city. Each description in the tax-list shall be reckoned a parcel in computing the amount of such fees.

SEC. 849. Such certificate, with the treasurer's receipt showing the payment of all the taxes therein specified, and the auditor's certificate of redemption from the tax-sales therein mentioned shall be conclusive evidence for all purposes and against all persons, that the parcel of real estate in said certificate and receipt described was, at the date thereof, free and clear of all taxes and assessments, and sales for taxes or assessments, except sales whereon the time of redemption had already expired, and the tax purchaser had received his deed.

SEC. 850. For any loss resulting to the county, or any subdivision thereof, or to any tax-purchaser, or tax-payer, from an error in said certificate or receipt, the treasurer and his sureties shall be liable on his official bond.

SEC. 851. The county treasurer shall assess any real property subject to taxation, which may have been omitted by the assessor, board of equalization, or county auditor, and collect taxes thereon, and in such cases he is required to note opposite the tract or lot assessed, the words, "by treasurer;" provided, that such assess-

Treasurer to collect: illegality in proceeding.
R. § 751.

Notice when land has been sold.
12 G. A. ch. 75, § 2.

To certify amount required to pay taxes and redemption: compensation for.

Treasurer liable for error.

May assess property omitted.
R. § 752.
C. § 51, § 851.
11 G. A. ch. 104.

ment shall be made within two years after the tax-list shall have been delivered to him for collection, and not afterwards.

The omission of the words "by owner by the following section: *C. treasurer*" does not render the assessment so made by him invalid, in *R. & M. R. R. Co. v. Carroll Co.*, 41-153.

Owner to have property omitted assessed:
effect of errors or omissions.
R. § 753.

SEC. 852. In all cases where real property subject to taxation shall not have been assessed by the township assessor or other proper officer, the owner thereof, by himself or his agent, shall have the same properly assessed by the treasurer and pay the taxes thereon; and no failure of the owner to have such property assessed, or to have the errors in the assessment corrected, and no irregularity, error, or omission in the assessment of such property, shall affect in any manner the legality of the taxes levied thereon, or affect any right or title to such real property which would have accrued to any party claiming or holding under and by virtue of a deed executed by the treasurer as provided for by this title, had the assessment of such property been in all respects regular and valid.

An error in assessments does not affect the validity of a tax sale: *Elbridge v. Kuehl*, 27-160, 172.

An error of the assessor under § 826, in assessing land to unknown owner is cured by this section: *Corning Town Co. v. Davis*, 44-622, 632.

This section is applicable to taxes levied for construction of drains, &c, under § 1214: *Patterson v. Baumer*, 43-477.

As to effect of illegality of part of a tax upon the sale, see notes to § 870.

When liens between vendor and vendee.
§ G. A. ch. 110.

SEC. 853. All taxes upon real estate shall, as between vendor and purchaser, become a lien upon such real estate on and after the first day of November in each year.

Taxes are not, prior to the first of November, a lien against which the covenants of grantor's deed operate. Therefore, where a contract of sale was made prior to that date and a deed executed subsequently and in pursuance thereof, held, that such taxes were not covered by the covenants of the deed: *Sackett v. Osborn*, 26-146.

This provision does not necessarily relieve the vendor from personal liability for taxes upon property which is sold by him before the 1st of November. When a portion of the property on which the tax is levied, remains undisposed of, the collector, having no authority to apportion it, the vendor remains liable for all: *Shaw v. Orr*, 30-355.

CHAPTER 2.

OF THE COLLECTION OF TAXES.

What receivable in payment.
R. § 754.
C. § 51, § 489.

SECTION 854. Auditor's warrants shall be received by the county treasurer in full payment of state taxes, and county warrants shall be received at the treasury of the proper county for the ordinary county tax, but money only shall be received for the school tax. Highway taxes may be discharged and highway certificates of work done received as provided by law.

SEC. 855. The county treasurers are authorized and required to receive in payment of all taxes by them collected, together with the interest and principal of the school fund, treasury notes issued as legal tender by the government of the United States, and the notes issued by the banks organized under, and in accordance with, the conditions of the act of the congress of the United States entitled, "An act to provide a national currency secured by a pledge of United States stocks, and to provide for the redemption thereof," approved February 25, 1863.

SEC. 856. The treasurer of state is hereby required to receive of the several county treasurers the above mentioned notes, in payment of any claims the state may have against any county for any part of the permanent school fund, or for any taxes due the state; and the said state treasurer shall pay out said notes in redemption of outstanding auditor's warrants.

DISTRESS AND SALE.

SEC. 857. No demand of taxes shall be necessary, but it is the duty of every person subject to taxation to attend at the office of the treasurer, unless otherwise provided, at some time between the second Monday of November and the first day of February, and pay his taxes; and if any one neglects to pay them before the first day of February following the levy of the tax, the treasurer is directed to make the same by distress and sale of his personal property, not exempt from taxation, and the tax-list alone shall be sufficient warrant for such distress.

The tax list is sufficient warrant, | any irregular or illegal proceedings even when the tax is a special one, to | of the officers connected with the levy protect the treasurer in his proceed- | of tax, provided such levy is author- ings thereunder from liability for ized: *Gaines v. Robb*, 8-193.

SEC. 858. When the treasurer distrains goods, and the owner shall refuse to give a good and sufficient bond for the delivery of said goods on the day of sale, he may keep them at the expense of the owner, and shall give notice of the time and place of their sale within five days after the taking, in the manner constables are required to give notice of the sale of personal property under execution; and the time of sale shall not be more than twenty days from the day of taking, but he may adjourn the sale from time to time, not exceeding five days in all, and shall adjourn at least once when there are no bidders, and in case of adjournment he shall put up a notice thereof at the place of sale. Any surplus remaining above the taxes, charges of keeping, and fees for sale, shall be returned to the owner, and the treasurer shall, on demand, render an account in writing of the sale and charges.

SEC. 859. Immediately after the taxes become delinquent, each county treasurer shall proceed to collect the same by distress and sale of the personal property of the delinquent tax-payers, in the manner prescribed in the preceding section, and for this purpose he shall, within sixty days after the taxes become delinquent, appoint one or more deputies to aid and assist him in collecting the delinquent taxes in his county. Each deputy so appointed, shall receive as a compensation for his services, and expenses, the sum of five per cent. on the amount of all delinquent taxes col-

lected and paid over by him, which percentage he shall collect from the delinquent, together with the whole amount of delinquent taxes and interest; and in the discharge of his duties as such assistant collector, should it become necessary to make the delinquent taxes by distress and sale, he shall be entitled to receive the same compensation, in addition to the five per cent. provided for in this section, as constables are entitled to receive for the sale of property on execution. But this section shall not apply, so far as it authorizes the appointment of deputies, to any county in which township collectors of taxes are elected, and the owners or agents of land that has been sold for delinquent taxes shall have the same privilege and extension of time for paying taxes as other tax-payers whose land has not been so sold.

The fact that lands have been advertised for sale for taxes does not prevent a sale of personal property to pay the same. If the lands, however, had been actually sold to pay the taxes, personal property could not be subjected to their payment: *Emerick v. Sloan*, 18-139.

A failure of the treasurer to collect

the taxes by distress and sale of personal property, when he might do so, will not invalidate a subsequent sale of real property for such taxes: *Stewart v. Corbin*, 25-144.

The receipt of a deputy collector should have the same force and effect as that of the treasurer: *Jones v. Welsing*, 52-220.

When treasurer
is resisted.
R. 3758
C. 51, § 494.

SEC. 860. If the treasurer, or his deputy, be resisted or impeded in the execution of his office, he may require any suitable person to assist him therein, and if such person refuse the aid, he shall forfeit a sum not exceeding ten dollars to be recovered by civil action in the name of the county, and the person resisting shall be liable as in the case of resisting the sheriff in the execution of civil process.

Taxes certified
to treasurer of
any other
county.
12 G. A. ch. 190,
§ 1.

SEC. 861. In all cases of delinquent taxes, in any county where the person upon whose property the same were levied, shall have removed into another county or state, leaving no property within the county where the taxes were levied, out of which the same can be made, the treasurer of the county where said taxes are delinquent, shall make out a certified abstract of said taxes as they appear upon the tax-book, and forward the same to the treasurer of the county in which the person resides, or has property, who is owing said taxes, whenever the treasurer transmitting said abstract has reason to believe that said taxes can be collected thereby.

Force and
effect of.
Same, § 2.

SEC. 862. The treasurer forwarding, and the one receiving, said abstract, shall each keep a record thereof, and upon the receipt and filing of said abstract in the office of the treasurer to whom the same is sent, it shall have the full force and effect of a levy of taxes in that county, and the collection of the same shall be proceeded with in the same manner provided by law for the collection of other taxes.

Penalty.
Same, § 3.

Return made.
Same, § 4.

SEC. 863. The officer collecting taxes so certified into another county, shall, in addition to the penalties provided by law on delinquent taxes, assess and collect the further penalty of twenty per cent. on the whole amount of such taxes, inclusive of the penalties thereon.

SEC. 864. The officer receiving said abstract, shall, whenever in his opinion the taxes are uncollectable, return the abstract with the endorsement thereon of "uncollectable," and in case said taxes are collected, the officer receiving the same shall transmit

the amount to the treasurer of the county where said taxes were levied, less the penalty provided by section eight hundred and sixty-three of this chapter.

DELINQUENT—LIEN—PENALTY.

SEC. 865. On the first day of February, the unpaid taxes, of whatever description, for the preceding year shall become delinquent and shall draw interest as hereinafter provided; and taxes upon real property are hereby made a perpetual lien thereon against all persons except the United States and this state, and taxes due from any person upon personal property, shall be a lien upon any real property owned by such person or to which he may acquire a title. The treasurer is authorized and directed to collect the delinquent taxes by the sale of any property upon which, the taxes are levied, or any other personal or real property belonging to the person against whom the taxes are assessed.

Taxes upon personal property become a lien upon real estate: *Paulson v. Rule*, 49-576; *Cummings v. Easton*, 46-183, and the treasurer is

not bound to seize and sell personal property for personal property tax but he may sell real property therefor: *Garretson v. Scofield*, 44-35.

SEC. 866. The treasurer shall continue to receive taxes after they become delinquent, until collected by distress and sale; but if they are not paid before the first day of March, he shall collect, in addition to the tax of each tax-payer so delinquent, as a penalty for non-payment, at the rate of one per cent. a month on the amount of the tax for the first three months, two per cent. a month for the second three months, and three per cent. a month thereafter. But the penalty provided by this section, shall not be construed to apply, and shall not apply, upon taxes levied by order of any court to pay judgments on city or county bonded indebtedness, and upon such taxes no other penalty than the interest which such judgments draw shall be collected.

[The words "a month" following "two per cent." in the sixth line, as they stand in the original, are omitted in the printed code.]

The last clause of the section held unconstitutional as applied to contracts executed before that provision took effect: *Lansing v. County Treasurer*. 1 Dillon (U. S. C. C.), 522

Dillon (U. S. C. C.), 522. See *Code Com'r's Rep.*

MISCELLANEOUS.

SEC. 867. The treasurer shall, in all cases, make out and deliver to the tax-payer a receipt, stating the time of payment, the description and assessed value of each parcel of land, and the assessed value of personal property, the amount of each kind of tax, the interest on each, and cost, if any, giving a separate receipt for each year; and he shall make the proper entries of such payments on the books of his office. Such receipt shall be in full of the party's taxes for that year, but the treasurer shall receive the full amount of any county, state, or school tax, whenever the same is tendered, and give a separate receipt therefor.

[The word "cost" in the fifth line, as in the original, is "costs" in the printed code.]

Form of receipt: effect of R. § 760.
12 G. A. ch. 140.

State, county or school tax paid separately.

Where a party in ignorance of a tax sale pays the taxes for which the sale was made and receives the treasurer's receipt therefor such payment does not defeat the sale: *Jones v. Welsing*, 52-220.

SEC. 868. The treasurer of each county shall, on or before the tenth day of each month, apportion the consolidated tax of each consolidated tax and civil township or independent school district in his county, collected during the preceding month, among the several funds to which it belongs, according to the number of mills levied for each fund contained in said consolidated tax, and having entered the amount of tax for each fund, including other taxes collected during the preceding month, upon his cash account, he shall report the amount of each distinct tax to the county auditor, who shall charge him up with the same.

SEC. 869. The county auditor shall keep full and complete accounts with the county treasurer, with each separate fund or tax by itself, in each of which accounts he shall charge him with the amounts in his hands at opening of such account, whether it be delinquent taxes, notes, cash, or other assets belonging to such fund, the amount of each tax for each year when the tax-book is received by him, and all additions to each tax or fund, whether by additional assessments, interest on delinquent taxes, amount received for peddlers' licenses or other items, and shall credit the treasurer on proper vouchers, for money disbursed, for double and erroneous assessments, including all improper and illegal assessments, the correction or remission of which causes a diminution of the tax, and for unavailable taxes, or such as have been properly and legally assessed, but which there is no prospect of collecting.

SEC. 870. The board of supervisors shall direct the treasurer to refund to the tax-payer, any tax, or any portion of a tax, found to have been erroneously or illegally exacted or paid, with all interest and costs actually paid thereon, and in case any real property subject to taxation shall be sold for the payment of such erroneous tax, interest or costs as above mentioned, the error or irregularity in the tax may at any time be corrected as above provided, and shall not affect the validity of the sale, or the right or title conveyed by the treasurer's deed, if the property was subject to taxation for any of the purposes for which any portion of the taxes for which the land was sold was levied, and the taxes were not paid before the sale, and the property had not been redeemed from sale.

This section authorizes the refunding of illegal or erroneous taxes, though voluntarily paid, and even after they have been divided up and distributed among the state, school, road and other funds, and where the supervisors refuse to refund the same, the sum may be recovered in an action against the county: *Lauman v. County of Des Moines*, 29-310; *Richards v. Wapello Co.*, 48-507. In this respect there is no difference between this section and Rev. § 762: *Isbell v. Crawford Co.*, 40-102. And in a city charter containing that section of the Rev., held, that the taxes might be recovered back, although they had

been paid over to the contractors who made the improvements for which the tax was specially levied: *Tallant v. City of Burlington*, 39-543.

A sale for aggregate taxes, only a part of which are illegal and erroneous, is valid: *Eldridge v. Kuehl*, 27-160, 172; *Parker v. Sexton*, 29-421; *Hurley v. Powell*, 31-64; *Rhodes v. Sexton*, 33-540; *Genther v. Fuller*, 36-604; *Madson v. Sexton*, 37-562.

This section does not apply when the taxpayer has voluntarily redeemed from a sale absolutely void by reason of the taxes having been previously paid, and the money so paid in redemption cannot be recovered:

Morris v. County of Sioux, 42-416.

Taxes paid by mistake cannot be recovered from the county, unless it appears that they were erroneous or illegal. So held, where taxes were paid through misapprehension as to the ownership of the property: *D. & S. C. R. Co. v. Board of Supervisors*, &c., 40-16; nor can they be recovered in such case from the rightful owner of the property: *Garrigan v. Knight*, 47-525. Nor can the holder of a tax title, which is adjudicated to be void, recover from the county taxes paid by him upon the property subsequently to the acquisition of his tax title: *Scott v. County of Chickasaw*, 5-47.

A special tax in aid of a railroad which has been paid over by the treasurer to the company cannot be refunded: *Butler v. Board of Supervisors*, &c., 46-326; such tax cannot be refunded to the tax-payer out of the county treasury; nor can the county devote other tax collected for such company, and still in the treasury, to the re-payment of that ille-

gally collected: *D. M. & M. R. Co. v. Lowry*, 51-486.

As to the recovery by the purchaser from the owner for taxes paid see notes to § 897.

The cause of action against the county for illegal or erroneous taxes paid, accrues at the very moment of payment of taxes, if at that time the taxes are erroneous and illegal. The statute of limitations against such action commences to run then, and not from the time that the error or illegality is adjudicated: *Callahan v. County of Madison*, 45-561; *Hamilton v. City of Dubuque*, 50-213; *Scott v. County of Chickasaw*, 53-47; a party cannot, by neglecting to demand the refunding of such tax, delay the running of the statute: *Beecher v. County of Clay*, 52-140, and the ignorance of plaintiff that the levy was illegal will not enable him to take advantage of the exception of the statute of limitations in case of fraud or mistake provided in § 2530: *Ibid.*

TAX SALE.

SEC. 871. On the first Monday in October in each year, the county treasurer is required to offer at public sale at his office, all lands, town lots, or other real property on which taxes of any description for the preceding year or years shall remain due and unpaid, and such sale shall be made for and in payment of the total amount of taxes, interest, and costs due and unpaid on such real property.

There must be but one sale for the total amount of taxes due and unpaid. A second sale for taxes which were due, and delinquent at the time of a previous sale, would be void. Such taxes cease to be a lien: *Preston v. Van Gorder*, 31-250; *Bowman v. Thompson*, 36-505.

By a sale the lien of taxes for previous years is extinguished; see notes to § 897. And this is true as well in favor of the owner who redeems from such sale, as the purchaser: *Hough v. Easley*, 47-330.

The same property cannot be twice sold at the same sale for the taxes of two different years: *Shoemaker v. Lacy*, 38-277, S. C. 45-422.

The tax sale does not divest the owner of title, but it remains in him until the tax deed is executed: *Williams v. Heath*, 22-519; *Lake v. Gray*, 35-44.

The fact that lands might have been sold at a previous sale for taxes then due, will not defeat a sale for

such taxes subsequently made: *Litchfield v. Hamilton Co.*, 40-66, 69.

The sale should be in the same tracts or parcels in which the land is assessed and advertised: *Martin v. Cole*, 38-141; and a sale in gross of distinct tracts or parcels, separately assessed and advertised, is illegal. See notes to § 897, under "Sale in gross." But a sale in gross of subdivisions larger than forties, as eighties, quarter sections or sections, when assessed as one tract to a known owner, is valid: *Corbin v. De Wolfe*, 25-124; *Stewart v. Corbin*, 25-144; *Eldridge v. Kuehl*, 27-160, 170; *Johnson v. Chase*, 30-308; *Ware v. Thompson*, 29-65; *Bulkley v. Callanan*, 32-461; *Martin v. Cole*, 38-141; *Smith v. Easton*, 37-584; and two or more lots, or parcels, used and occupied together for one purpose, should be assessed and sold as one tract: *Wearer v. Grant*, 39-294; *Greer v. Wheeler*, 41-85.

Where there was no offering for

when and how
made.
R. 2763.
C. 51, § 496.

sale and no bidding, but the treasurer marked the land as "sold," held, that there was no valid sale: *Besore v. Dosh*, 43-211; so held, also, where the agent of the purchaser applied at the office of the treasurer and selected certain lands, which were entered as sold to him and a certificate issued: *Miller v. Corbin*, 46-150.

The act of the treasurer in bidding off land as the agent of another for compensation constitutes sufficient fraud to invalidate the deed: *Corbin v. Beebe*, 36-336.

A combination between purchasers at a tax sale will vitiate a title acquired at such sale, although it is not affirmatively shown that the person

making that identical purchase participated in the combination: *Kerwer v. Allen*, 31-578.

A tacit understanding among bidders that they shall not bid against each other, will invalidate a sale: *Johns v. Thomas*, 47-441.

In a particular case, held, that the facts did not establish a fraudulent combination: *Pearson v. Robinson*, 44-413.

As to effect upon the deed of mistake or fraud of the officer, see § 897 and notes.

A sale may be made on the first Monday of a month subsequent to October; see § 886, and notes.

Notice: what to contain.
R. § 764.
C. § 61, § 498.
Ex. S. 8. G. A.
ch. 24, § 5.

SEC. 872. The notice to be given of such sale shall state the time and place thereof, and contain a description of the several parcels of real property to be sold for the delinquent taxes of the preceding year, and such real property as has not been advertised for the taxes of previous years and on which the taxes remain due and delinquent, and the amount of taxes and amount of interest and costs against each tract, and the name of the owner, when known, or person, if any, to whom taxed.

Land should be advertised in the same tracts or parcels in which it is entered in the tax book and assessed: *Corbin v. D. Wolfe*, 25-124; *McClintock v. Sutherland*, 35-437; and should be sold and deeded by the same description as set out in the advertisement: *Martin v. Cole*, 35-141.

The treasurer should so advertise as to incur as little expense as possible consistent with a due compliance with the law; therefore held, that the whole or a part of a section of land in a contiguous body belonging to the same owner, should be advertised as one tract, and not in its smallest subdivisions: *Iowa R. Land Co. v. Sac Co.* 39-124; *C. R. & M. R. R. Co. v. Carroll Co.*, 41-153, 176; (and see *Martin v. Cole, supra*;) and this was the provision also as to land assessed to unknown owners, (8 G. A. Ex. Sess., ch. 24, § 4), but this provision was omitted in the Code, the Code Com-

missioners saying that it "is entirely inconsistent with the settled policy of our law in regard to such sales, under the decision of the supreme court 'that lands are to be advertised and sold under the descriptions and in the tracts or parcels in which they are entered in the tax book.'" See *Code Com'r's Rep.*

Property is to be advertised but once, and the sale of such as is advertised may be made at a sale held any time thereafter pursuant to adjournments regularly made: *Hurley v. Street*, 29-429.

An omission to include certain lands in the advertisement, held, not sufficient to defeat a deed made in pursuance of a sale thereof, the owner being bound to know that his taxes are delinquent: *Squier v. Johnson*, 52-472. The tax deed is conclusive as to fact of advertisement; see notes to § 897.

How published.
R. § 764.
10 G. A. ch. 115,
§ 2.
11 G. A. ch. 108,
14 G. A. ch. 11,
§ 2.

SEC. 873. The county treasurer shall give such notice by causing the same to be published once in each week for three successive weeks, the last publication to be at least one week prior to the day of sale, in some newspaper printed in such county, if any such there be, or if not, then in the nearest newspaper in this state having a general circulation in such county; and also by causing a copy of such notice to be posted on the door of the county court house at least four weeks before the day of sale. But no newspaper shall be selected unless it has two hundred regular weekly subscribers, and has been regularly printed and pub-

lished for at least three months preceding the fifteenth of September of said year in the same county, and has at least twenty actual subscribers in the county wherein the delinquent property is situated, for at least three months preceding the fifteenth of September of that year. And in all cases where the treasurer may doubt the qualifications of any paper as above fixed, he shall require proof thereof by the affidavit of the publisher.

[The word "had" standing in the twelfth line in the printed Code is not in the original.]

The publisher of a newspaper can- | in his newspaper, though it be the
not by mandamus compel the publi- | only one in the county: *Welch v.
cation of the advertisement of sales | Board of Supervisors, etc.*, 23-199.

SEC. 874. The treasurer shall charge and collect, in addition to the taxes and interest, a sum not exceeding twenty cents on each tract of real property advertised for sale, which sum shall be paid into the county treasury, and the county shall pay the costs of publication, but in no case shall the county be liable for more than the amount charged to the delinquent lands for advertising, and if the treasurer cannot procure the publication of said notice for that sum, or, if for any other reason the treasurer is unable to procure the publication of said notice, he shall post up written notices of said sale in four of the most public places in his county four weeks before sale, and notice so given shall have the same force and effect as though the same had been published in a newspaper. In that case, he shall, before making such sale, file in the office of the auditor of his county, a copy of said notice with his certificate endorsed thereon, setting forth that said notice had been posted up in four of the most public places in his county four weeks before the sale, which said certificate shall be subscribed by him and sworn to before said auditor, and shall be presumptive evidence of the facts therein stated.

SEC. 875. The county treasurer shall, at his office on the day of the sale, at the hour of ten o'clock in the forenoon, offer for sale, separately, each tract or parcel of real property advertised for sale, on which the taxes and costs shall not have been paid.

As to tracts or parcels in which property is to be offered and sold, see

SEC. 876. The person who offers to pay the amount of taxes due on any parcel of land, or town lot, for the smallest portion of the same is to be considered the purchaser, and when such purchaser shall designate the portion of any tract of land or town lot for which he will pay the whole amount of taxes assessed against any such tract or lot, the portion thus designated shall, in all cases, be considered an undivided portion. In all cases where the homestead is listed separately as a homestead, it shall be liable only for the taxes thereon.

A county cannot become the purchaser of lands at tax sale: *Bruck v. Brnesigks*, 18-393.

Two or more lots jointly composing the homestead may be so'd as one tract and the sale will not be invalid as being in mass: *Weaver v. Grant*, 33-294.

Unless the homestead is listed sep-

arately all the taxes against the owner become liens thereon as upon any other real property: *Salter v. City of Burlington*, 42-531.

The bid if for less than the whole of the tract is to be for an undivided portion as for a half or a fourth or seven-fortieths: *Brundige v. Maloney*, 2-218.

Cost of publication: notice filed.
R. § 764.
Ex. S. 8 G.A.
ch. 24, § 4.
9 G. A. ch. 173,
§ 10.
10 G. A. ch. 115,
§ 2.

Hour and place
of sale.
R. § 765.
C. 51, § 499.

Purchaser:
homestead lia-
ble.
R. § 766.
C. 51, § 501.
9 G. A. ch. 173,
§ 9.

SEC. 877. The treasurer shall continue the sale from day to day as long as there are bidders, or until the taxes are all paid.

Sale continued.
R. 2767.
C. 51, § 499.

Whether it was illegal or even improper for the treasurer to regard all sales made under a continuance, as of the date of the commencement of such sale *quere: Phelps v. Meade*, 41-470, and the deed is conclusive that continuances were properly made, etc.; see notes to § 897.

SEC. 878. The person purchasing any parcel or part thereof shall forthwith pay to the treasurer the amount of taxes and costs charged thereon, and on failure to do so, the said parcel shall at once again be offered as if no such sale had been made. Such payments may be made in the same fund receivable by law in payment of taxes.

Re-sale.
R. 2768.
C. 51, § 502.

[Sixteenth General Assembly, Chapter 79.]

SEC. 1. It shall be the duty of the several county treasurers of this state, on the first Monday of October in each year, or [at] any adjourned sale thereafter, to offer and sell at public sale, to the highest bidder therefor, all lands and town lots which then remain liable to sale for delinquent taxes, and which have heretofore been advertised and offered at public sale and passed for want of bidders, for two or more years, by giving general notice of such sale for six weeks previous thereto in the official papers of each of their respective counties, which said notice shall refer to and embrace the general provisions of this act; and in case of redemption of any real estate sold under the provisions of this act, the purchaser shall only receive the amount paid and a pro rata proportion of the penalty, interest and costs.

County treasurer on 1st Monday in October shall sell.

Lands heretofore advertised and offered for sale.

In case of redemption.

To ascertain interest and penalties to be paid for redemption.

Amount paid for any parcel to be apportioned.

Unavailable tax.

To be reported to state auditor.

Owner may pay before sale.
R. 2769.

SEC. 2. In ascertaining the interest and penalties to be paid upon the redemption of such real estate from such sale, the sum due on any piece or parcel of real estate sold under and by virtue of the provisions of this act, shall be taken to be the full amount of taxes, interest and costs due on such parcel at the time of such sale; and all the provisions of the revenue laws of Iowa, not inconsistent with this act, shall apply to such sale, and to the redemption of any real estate sold by virtue of this act; and the amount so paid for any parcel of real estate shall be apportioned pro rata among the different funds to which it belongs.

SEC. 3. The amount of taxes due on any real estate sold under the provisions of this act, in excess of the amount for which the same was sold, shall be credited, as unavailable tax, to the county treasurer, by the county auditor, apportioning the amount among the different funds to which the same belongs. The amount of such excess due to funds belonging to the state, shall be reported by the county auditor to the auditor of state as unavailable, who shall give the county credit for the same.

SEC. 879. Any person owning or claiming lands, or town lots, advertised for sale as aforesaid, may pay to the county treasurer, at any time before the sale thereof, the taxes due thereon with interest, cost of advertising, and all the costs which may have accrued up to the time of such payment.

SEC. 880. In all advertisements for the sale of real property for taxes, and in entries required to be made by the county auditor, treasurer, or other officer, letters and figures may be used as

they have been heretofore, to denote townships, ranges, sections, parts of sections, lots, blocks, date, and the amount of taxes, interest, and costs. And no irregularity or informality in the advertisement shall affect in any manner the legality of the sale, or the title to any real property conveyed by the treasurer's deed under this chapter, but, in all cases, the provisions of this chapter shall be sufficient notice to owners of the sale of their property.

SEC. 881. The treasurer shall obtain a copy of said advertisement, together with a certificate of the due publication thereof, from the printer or publisher of the newspaper in which the same shall have been published, and shall file the same in the office of the county auditor, and such certificate shall be substantially in the following form:

I, A B, publisher (or printer) of the a..... newspaper printed and published in the county of and state of Iowa, do hereby certify that the foregoing notice and list were published in said newspaper once in each week for three successive weeks, and the last of which publications was made on the day of A. D. 18...., and that copies of each number of said paper in which said notice and list were published, were delivered by carrier or transmitted by mail to each of the subscribers to said paper, according to the accustomed mode of business in this office.

A..... B.....
Publisher (or printer) of the.....

STATE OF IOWA, { ss.
..... County. }

The above certificate of publication was subscribed and sworn to before me by the above named A B, who is personally known to me to be the identical person described therein, on the day of A. D. 18....

C..... D.....
County Auditor.....County, Iowa.

A failure to comply with the provisions of this section does not invalidate the tax deed: *Hurley v. Powell*, 31-64.

SEC. 882. The county auditor shall attend all sales of real property for taxes made by the treasurer, and make a record thereof in a book to be kept by him for that purpose, therein describing the several parcels of real property on which the taxes and costs were paid by the purchaser, as they are described in the list or advertisement on file in his office, stating in separate columns the amount as obtained from the treasurer's tax-list, of each kind of tax, interest, and costs for each tract or lot, how much and what part of each tract or lot was sold, to whom sold, and date of sale. The treasurer shall also keep a book of sales in which, at the time of sale, he shall make the same records. He shall also note in the tax-list, opposite the description of the property sold, the fact and date of such sale.

The record of sales is receivable in evidence: *McCready v. Sexton*, 29-56, 375.

A failure to make the record of the fact of sale as here required, will not enable a subsequent purchaser at an execution sale to take title paramount to that of the tax purchaser, where

Letters and figures used:
informality:
effect of.
R. § 770.

Certificate of publication.
R. § 771.

Auditor to attend sales:
duty: treasurer to keep record.
R. § 772.

SEC. 883. When all the parcels of real property advertised for sale adjourned. ^{R. § 773.} sale shall have been offered, and a portion thereof shall remain unsold for want of bidders, the treasurer shall adjourn the sale to some day not exceeding two months from the time of adjournment, due notice of which day shall be given at the time of adjournment, and also by keeping a notice thereof posted in a conspicuous place in the treasurer's office; but no further advertisement shall be necessary. On the day fixed for the re-opening of the sale the same proceedings shall be had as provided hereby for the sale commencing on the first Monday of October. And further adjournments shall be made from time to time, not exceeding two months, and the sales shall be thus continued until the next regular annual sale, or until all the taxes shall have been paid.

SEC. 884. If any treasurer or auditor shall fail to attend any sale of lands as required by this chapter, either in person or by competent deputy, he shall be liable to a fine of not less than fifty nor more than three hundred dollars, to be recovered by an action in the district court against the treasurer or auditor, as the case may be, and his bondsmen. And if such officer or deputy shall sell, or assist in selling, any real property, knowing the same to be not subject to taxation, or that the taxes for which the same is sold have been paid, or shall knowingly and wilfully sell, or assist in selling, any real property for payment of taxes to defraud the owner of such real property, or shall knowingly and wilfully execute a deed for property so sold, he shall be liable to a fine of not less than one thousand nor more than three thousand dollars, or to imprisonment not exceeding one year, or to both fine and imprisonment, and to pay the injured party all damages sustained by any such wrongful act, and all such sales shall be void.

SEC. 885. If any county treasurer or auditor shall hereafter be, either directly or indirectly, concerned in the purchase of any real property sold for the payment of taxes, he shall be liable to a penalty of not more than one thousand dollars, to be recovered in an action in the district court, brought in the name of the county against such treasurer or auditor, as the case may be, and his bondsmen; and all such sales shall be void.

Where the sale is void as provided in the last clause of this section, for fraud, the owner may set up and show such fraud to defeat the tax title in any action in which the holder thereof relies upon such title: *Corbin v. Beebe*, 36-336.

The act of the treasurer in bidding off land as agent of another for compensation, renders the sale void under this section: *Ibid.* And where a party sent a sum of money to the treasurer, with directions to bid off for him the amount sent, for which services he was to be paid a commission, and the sale was thus made, held, that the treasurer was "concerned in the purchase," and the sale was void: *Everett v. Beebe*, 37-452.

The fraud of the deputy as well as of the treasurer, will, under this section, render the sale void: *Ellis v. Peck*, 45-112.

A sale to an employee in the treasurer's office is not void by reason of this section: *Lorain v. Smith*, 37-67.

The word "void" is here used in the sense of voidable. A tax deed which might be void for fraud in the hands of the original purchaser will be good in the hands of a subsequent purchaser in good faith, without notice of the fraud: *Ellis v. Peck*, 45-112.

A purchaser whose title is void for fraud of the officer, may recover from the owner the taxes paid. See notes to § 897.

Same.
R. § 775.

SEC. 886. If, from neglect of officers to make returns, or from any other good cause, real property cannot be duly advertised and offered for sale on the first Monday of October, the treasurer shall make the sale on the first Monday of the next succeeding months in which it can be made, allowing time for the publication as provided in this chapter.

A deed reciting the sale as made on the first Monday of a subsequent month is not void as showing a sale at a time not authorized by law: *Eldridge v. Kuehl*, 27-160, 170.

Where it appears from the deed that the sale was made on the first Monday of some month subsequent to October, it will be presumed that a proper cause existed for holding the

sale at such time. The reason therefor need not appear of record: *Sulley v. Kuehl*, 30-275; *Love v. Welch*, 33-192; *Easton v. Saery*, 44-654; and if the non-existence of these conditions can in any event be shown to defeat the tax-title, the burden of proof is upon the party who assails it: *Love v. Welch, supra*.

CERTIFICATE OF PURCHASE.

SEC. 887. The county treasurer shall make out, sign, and deliver to the purchaser of any real property sold for the payment of taxes as aforesaid, a certificate of purchase, describing the property on which the taxes and costs were paid by the purchaser, as the same was described in the records of sales, and also how much and what part of each tract or lot was sold, and stating the amount of each kind of tax, interest, and costs for each tract or lot for which the same was sold, as described in the records of sales, and that payment had been made therefor. If any person shall become the purchaser of more than one parcel of property, he may have the whole included in one certificate, but each parcel shall be separately described.

[The original contains a provision as to fees for the certificate, but as that matter is found now in the sections as to compensation of treasurer and auditor (\$ 3793 and 3797) it was probably transferred there by the editor, and is omitted here as in the printed code.]

The certificate does not pass the title to the purchaser, but it remains in the owner until the execution of a deed: *Williams v. Heath*, 22-519. It simply gives him a lien for the taxes, interest, costs, penalties, etc: *Eldridge v. Kuehl*, 27-160, 174; *Mal-*

lory v. French, 38-431.

The certificate is evidence of the facts recited therein, but in case it is found to be in conflict with the record of sales, the latter will prevail: *McCready v. Sexton*, 29-356, 374; *Henderson v. Oliver*, 32-512.

SEC. 888. The certificate of purchase shall be assignable by endorsement, and an assignment thereof shall vest in the assignee, or his legal representative, all the right and title of the original purchaser; and the statement in the treasurer's deed of the fact of the assignment shall be presumptive evidence of such assignment. In case said certificate is assigned, then the assignment of said certificate shall be placed on record in the office of the county treasurer in the register tax sales.

The assignee of the certificate takes it subject to all equities or infirmities affecting it in the hands of the original purchaser: *Watson v. Phelps*, 40-482; *Light v. West*, 42-138.

Before the Code no record of the

assignment was necessary, and a quitclaim deed given by the assignor after an unrecorded assignment was held void: *Smith v. Stephenson*, 45-645.

Certificate assignable.
R. § 778.
9 G. A. ch. 173.
§ 12.

When purchaser pays subsequent taxes.
10 G. A. ch. 100, § 1.

SEC. 889. The county treasurer shall also make out, sign, and deliver to the purchaser of any real property sold for taxes aforesaid, duplicate receipts for any taxes, interest, and costs, paid by said purchaser, after the date of said purchase for any subsequent year or years, one of which receipts said purchaser shall present to the county auditor, to be by him filed in his office, and a memorandum thereof entered on the register of sales. And if he neglect to file such duplicate receipt with the auditor before the redemption, such tax shall not be a lien upon the land, and the person paying such tax shall not be entitled to recover the same of the owner of such real estate.

Subsequent taxes paid in good faith by the holder of a void tax title may be recovered of the owner: *Claussen v. Rayburn*, 14-136; but with only six per cent. interest thereon: *Orr v. Traavcier*, 21-68; *Early v. Whittingham*, 43-162; *Thompson v. Savage*, 47-522. But taxes paid by the purchaser after redemption is made by the owner, cannot be recovered, and if he pays them upon the supposition that the redemption is illegal he does so at his peril: *Byington v. Allen*, 11-3.

As to the recovery from the owner

by the purchaser of the taxes paid in acquiring a tax title, void for fraud, see notes to § 897.

Where a tax title is void, the holder thereof cannot recover from the county taxes paid by him upon the property subsequently to the acquisition of such title: *Scott v. County of Chickasaw*, 5-47.

Where the duplicate receipt for subsequent taxes paid by the tax purchaser is not filed, &c., the owner may redeem without paying such taxes: *Kennedy v. Bigelow*, 43-74.

REDEMPTION.

How effected.
R. 2779.
C. 51, § 505.
13 G. A. ch. 90.
ch. 173 § 13.

SEC. 890. Real property, hereafter sold under the provisions of this chapter, may be redeemed at any time before the right of redemption is cut off, as hereinafter provided, by the payment to the county auditor of the proper county, to be held by him subject to the order of the purchaser, of the amount for which the same was sold and twenty per centum of such amount immediately added as a penalty, with ten per cent. interest per annum on the whole amount thus made from the day of sale, and also the amount of all taxes, interest, and costs paid for any subsequent year or years, and a similar penalty of twenty per centum added as before on the amount of the payment for each subsequent year, with ten per cent. interest per annum on the whole of such amount or amounts from the day or days of payment, unless such subsequent taxes shall have been paid by the person for whose benefit the redemption is made, which fact may be shown by the treasurer's receipt; and provided further, that such penalty for the non-payment of the taxes of any such subsequent year or years shall not attach, unless such subsequent tax or taxes shall have remained unpaid until the first day of March after they become due, so that they have become delinquent, nor shall any of said penalties apply in the cases mentioned in the last clause of section eight hundred and sixty-six of this chapter.

The law in force at the time of *sale*, regulates the time within which redemption may be made, and not that in force at the time of the assessment: *Negus v. Yancy*, 22-57.

A purchaser at tax sale who has in

good faith paid the subsequent taxes on the property as here provided, may, after eviction by the owner, recover the amount of taxes so paid: *Claussen v. Rayburn*, 14-136, and see other cases under § 897; but the tax

purchaser cannot recover of the owner, taxes voluntarily paid on the property after redemption has been made by the owner. If he pay such taxes, supposing that the redemption is insufficient, he does so at his peril: *Byington v. Allen*, 11-3.

The owner in redeeming must pay the penalty upon the taxes paid by the purchaser, subsequently to the sale, as well as upon the amount paid at the sale: *Mulligan v. Hintrager*, 18-171.

Where a party by reason of owning any interest in the property has a right to redeem he may redeem the whole and the purchaser may require him to redeem the whole if any: *Curl v. Watson*, 25-35; *Rice v. Nel-*

son, 27-148.

If redemption is made before the deed is executed the land is left free in all respects from the lien of taxes, penalty, etc., as if the taxes had been paid before sale: *Lake v. Gray*, 35-44.

Under 9 G. A., ch. 173, § 13, held, that redemption could not be made after the expiration of three years from the sale, although the deed had not been taken by the purchaser: *Pearson v. Robinson*, 44-413; *Scofield v. McDowell*, 47-129, 130.

A purchaser at tax sale of property which was exempt from taxation has no lien for taxes subsequently paid thereon. See note to § 797.

SEC. 891. The county auditor shall, upon application of any party to redeem any real property sold under the provisions of this chapter, and being satisfied that such party has a right to redeem the same, and upon the payment of the proper amount, issue to such party a certificate of redemption, setting forth the facts of the sale substantially as contained in the certificate of sale, the date of the redemption, the amount paid, and by whom redeemed, and he shall make the proper entries in the book of sales in his office, and shall immediately give notice of such redemption to the county treasurer. Such certificate of redemption shall then be presented to the treasurer, who shall countersign the same and make the proper entries in the books of his office, and no certificate of redemption shall be held as evidence of such redemption without such signature of the treasurer.

A party having any right or interest in the property may redeem, but a mere stranger to the title cannot: *Byington v. Bookwalter*, 7-512.

Any right which in law or equity amounts to ownership in the land; any right of entry upon it, to its possession, or the enjoyment of any part of it, which can be deemed an estate, makes the person an owner so far as is necessary, to give him the right to redeem. Therefore, held, that the wife who has such an interest in the homestead belonging to the husband as to entitle her to redeem: *Adams v. Bean*, 19-61; and that the assignee of a widow's unassigned right of dower might redeem the entire property in which such right existed: *Rice v. Nelson*, 27-148.

A lessee under a lease made subsequently to a sale may redeem the leased premises, even without the knowledge or consent of the owner: *Byington v. Rider*, 9-566.

The holder of the patent title may redeem, although there is an outstanding tax title acquired under a prior sale: *Lancaster v. County Au-*

Certificate of
redemption.
R. 2780.

Countersigned
by treasurer.

ditor, 2 Dillon, (U. S. C. C.) 478.

An heir of a mortgagee has sufficient equitable interest to be entitled to redeem: *Burton v. Hintrager*, 18-348.

The statutes providing for redemption are to receive a liberal construction: *Ibid*; *Rice v. Nelson*, *supra*; and *Corning Town Co. v. Davis*, 44-622.

A person having no interest in the property has no right to redeem, and if he pays money for that purpose, the act neither vests title in him nor divests that of the tax purchaser, nor does it inure to the benefit of one having the right to redeem: *Penn v. Clemans*, 19-372.

Where the owner pays in the proper amount to redeem, the failure of the auditor to issue a proper certificate of redemption will not defeat such redemption, and the tax purchaser is not entitled to a deed: *Corbin v. Stecarts*, 44-543; and a failure to notify the treasurer of the redemption, or to pay the money over to the person entitled thereto, will not defeat the redemption: *Fenton v. Way*, 40-196.

The right of the auditor to allow a redemption, cannot be questioned, nor the redemption set aside in an action to compel the treasurer to

make a deed. The treasurer cannot disregard the action of the auditor; *Hartman v. Anderson*, 48-309.

Minors and lunatics.
R. § 779.
9 G. A. ch. 173.
§ 14.

SEC. 892. If real property of any minor or lunatic is sold for taxes, the same may be redeemed at any time within one year after such disability is removed, in the manner specified in the following section, or such redemption may be made by the guardian or legal representative under section eight hundred and ninety, at any time before the delivery of the deed.

The right of a minor or lunatic as herein given is limited to his own interest in the property, and does not extend to that of other owners or tenants in common: *Jacobs v. Porter*, 34-341; *Miller v. Porter*, 35-166; *Stout v. Merrill*, 35-47.

The simple production from the custody of the guardian of a minor who was a near relative, of an acknowledged conveyance, held, not to make out a *prima facie* case of ownership in the minor entitling him to redeem under this section: *Walker v. Sargent*, 47-448.

The disability of a minor is re-

moved by his death, and the year within which redemption must be made commences to run from that time, and not from the time when he would have come of age: *Gibbs v. Saucier*, 48-443.

The right of a minor to redeem is assignable and will pass by conveyance: *Stout v. Merrill*, 35-47, 57.

To entitle a minor to redeem after the general time of redemption has expired, he must have been the owner of the property sold at the time of the sale: *Burton v. Hintrager*, 18-348.

How redeemed
after deed
made.
11 G. A. ch. 124.
§ 1, 2.

SEC. 893. Any person entitled to redeem lands sold for taxes after the delivery of the deed, shall redeem the same by an equitable action in a court of record, in which all persons claiming an interest in the land derived from the tax sale, as shown by the record, shall be made defendants, and the courts shall determine the rights, claims, and interest of the several parties, including liens for taxes and claims for improvements made on the land by the person claiming under the tax title. And no person shall be allowed to redeem land sold for taxes in any other manner after the service of the notice provided for by the next section, and the execution and delivery of the treasurer's deed.

Where, through mistake of the officer, the owner failed to redeem from a valid sale, but redeemed from a subsequent invalid one, which he supposed was the only sale, he was allowed to redeem after the deed had been executed, it being held that the mistake lying at the door of the officer was sufficient ground for equitable relief: *Noble v. Bullis*, 23-559.

Where a party had failed to redeem within proper time by reason of a failure of the officer to inform him upon inquiry, that a tax sale of the property had been made, held that he should be allowed to redeem by equitable action under this section: *Corning Town Co. v. Davis*, 44-622.

EXECUTION OF DEED—NOTICE GIVEN.

Before deed is
made notice to
be given:
what contain:
how served.
R. § 781.
14 G. A. ch. 124

SEC. 894. After the expiration of two years and nine months after the date of sale of the land for taxes, the lawful holder of the certificate of purchase may cause to be served upon the person in possession of such land or town lot, and also upon the person in whose name the same is taxed, if such person resides in the county where the land is situated, in the manner provided by law for the service of original notices, a notice signed by him, his

agent, or attorney, stating the date of sale, the description of the land or town lot sold, the name of the purchaser, and that the right of redemption will expire and a deed for said land be made, unless redemption from such sale be made within ninety days from the completed service thereof. Service may be made upon non-residents of the county by publishing the same three times in some newspaper printed in said county, and if no newspaper is printed in said county, then in the nearest newspaper published in this state. But any such non-resident may file with the treasurer of the county a written appointment of some resident of the county where his lands or lots are situated as agent upon whom service shall be made, and in such case, personal service of said notice shall be made upon said agent. Service shall be deemed completed when an affidavit of the service of said notice, and of the particular mode thereof, duly signed and verified by the holder of the certificate of purchase, his agent, or attorney, shall have been filed with the treasurer authorized to execute the tax-deed. Such affidavit shall be filed by said treasurer, and entered upon the records of his office, and said record or affidavit shall be presumptive evidence of the completed service of notice herein required; and, until ninety days after the service of said notice, the right of redemption from such sale shall not expire. Any person swearing falsely to any fact or statement contained in said affidavit shall be deemed guilty of perjury and punished accordingly. The cost of serving said notice, whether by publication or otherwise, together with the cost of the affidavit, shall be added to the redemption money.

Service of the notice may be made by the holder of the certificate. Service upon the holder of the legal title, in the absence of any showing that he is not in possession, is sufficient. A mortgagee is not entitled to notice, unless in possession of the property: *Hall v. Guthridge*, 52-408.

SEC. 895. Immediately after the expiration of ninety days from the date of service of the written notice hereinbefore provided, the treasurer then in office shall make out a deed for each lot or parcel of land sold and remaining unredeemed, and deliver the same to the purchaser upon the return of the certificate of purchase. The treasurer shall demand twenty-five cents for each deed made by him on such sales, but any number of parcels of land bought by one person may be included in one deed, if desired by the purchaser.

When the first deed executed by the treasurer is so imperfect or informal as not to pass the title, he has the power and it is his duty to execute a second and corrected deed, conveying the title: *McCready v. Sexton*, 29-356; *Parker v. Sexton*, 29-421; *Hurley v. Street*, 29-429; *Johnson v. Chase*, 30-308; *Gray v. Coan*, 30-336; *Genthal v. Fuller*, 36-604. But having made a valid deed, the treasurer has no authority to make a second one, and a second deed, if made, could have no effect upon the title conveyed by the first: *Bulkley v. Callanan*, 32-461.

The power to execute a second deed is not given for the purpose of enabling the officer to pervert the truth by false recitals as to the records upon which it is based. Unless executed to correct a mistake, misdescription, incorrect recital, or other matter in conflict with the facts, it is void: *Gould v. Thompson*, 45-450.

The treasurer has no authority to make a deed for land which has been redeemed, and such deed would be void: *Fenton v. Way*, 40-196.

The right of the auditor to allow a redemption to be made cannot be questioned in an action against the

when deed
shall be made.
R. 22-781-2.
C. 51, 22-303 4.

treasurer for the deed, see note to § 891. | the land was advertised and sold: *Martin v. Cole*, 38-141, and see notes to § 871.

The "lot" or "parcel" here contemplated is the same under which

Form of
R. § 783.

SEC. 896. Deeds executed by the treasurer shall be substantially in the following form:

Know all men by these presents, that whereas the following described real property, viz: (here follows the description) situated in the county of, and state of Iowa, was subject to taxation for the year (or years) A. D., and whereas the taxes assessed upon said real property for the year (or years) aforesaid remained due and unpaid at the date of the sale herein-after named; and whereas the treasurer of said county did, on the day of A. D. 18 . . . , by virtue of the authority in him vested by law, at (an adjournment of) the sale begun and publicly held on the first Monday of A. D. 18 . . . , expose to public sale at the office of the county treasurer in the county aforesaid, in substantial conformity with all the requisitions of the statute in such case made and provided, the real property above described, for the payment of the taxes, interest, and costs then due and remaining unpaid on said property, and whereas, at the time and place aforesaid, A. B. of the county of and state of, having offered to pay the sum of dollars and cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on said property, for (here follows the description of the property sold) which was the least quantity bid for; and payment of said sum having been by him made to said treasurer, said property was stricken off to him at that price; and whereas, the said A. B. did, on the day of A. D. 18 . . . , duly assign the certificate of the sale of the property as aforesaid and all his right, title, and interest to said property to E. F., of the county of and state of; and whereas, by the affidavit of filed in said treasurer's office on the day of A. D. it appears that due notice has been given, more than ninety days before the execution of these presents, to and of the expiration of the time of redemption allowed by law; and whereas, three years have elapsed since the date of said sale, and said property has not been redeemed therefrom as provided for by law.

Now, therefore, I, C. D., treasurer of the county aforesaid, for and in consideration of said sum to the treasurer paid as aforesaid, and by virtue of the statute in such case made and provided, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said A. B. [or E. F.] his heirs and assigns, the real property last hereinbefore described to have and to hold unto him the said A. B. [or E. F.] his heirs and assigns forever: subject, however, to all the rights of redemption provided by law. In witness whereof I, C. D., treasurer as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name on this day of 18 . . .

STATE OF IOWA, } ss.
.....COUNTY, }

I hereby certify that before me.....in and for said county, personally appeared the above named C. D., treasurer of said county, personally known to me to be the treasurer of said county at the date of the execution of the above conveyance, and to be the identical person whose name is affixed to and who executed the above conveyance as treasurer of said county, and acknowledged the execution of the same to be his voluntary act and deed as treasurer of said county, for the purposes therein expressed.

Given under my hand [and seal] thisday of.....A.D. 18..

.....

EFFECT OF DEED.

SEC. 897. The deed shall be signed by the treasurer in his official capacity, and acknowledged by him before some officer authorized to take acknowledgements of deeds; and, when substantially thus executed and recorded in the proper record of titles to real estate, shall vest in the purchaser all the right, title, interest, and estate of the former owner in and to the land conveyed, and also all the right, title, interest, and claim of the state and county thereto, and shall be presumptive evidence in all the courts of this state, in all controversies and suits in relation to the rights of the purchaser, his heirs or assigns, to the land thereby conveyed, of the following facts:

1. That the real property conveyed was subject to taxation for the year or years stated in the deed;
2. That the taxes were not paid at any time before the sale;
3. That the real property conveyed had not been redeemed from the sale at the date of the deed;
4. That the property had been listed and assessed;
5. That the taxes were levied according to law;
6. That the property was duly advertised for sale;
7. That the property was sold for taxes as stated in the deed.

And it shall be conclusive evidence of the following facts:

1. That the manner in which the listing, assessment, levy, notice, and the sale were conducted was in all respects as the law directed;
2. That the grantee named in the deed was the purchaser;
3. That all the prerequisites of the law were complied with by all the officers who had, or whose duty it was to have had, any part or action in any transaction relating to or affecting the title conveyed, or purporting to be conveyed, by the deed, from the listing and valuation of the property up to the execution of the deed, both inclusive, and that all things whatsoever required by law to make a good and valid sale, and to vest the title in the purchaser were done, except in regard to the points named in this section, wherein the deed shall be presumptive evidence only.

And in all controversies and suits involving the title to real property claimed and held under and by virtue of a deed executed

Vests title in
R. § 784.
C. 51, § 503.

Is presumptive
evidence.

What must be substantially as aforesaid by the treasurer, the person claiming proved to be title adverse to the title conveyed by such deed, shall be required to defeat title.

To prove, in order to defeat the said title, either that the said real property was not subject to taxation for the year or years named in the deed, that the taxes had been paid before the sale, that the property had been redeemed from the sale according to the provisions of this chapter, and that such redemption was had or made for the use and benefit of persons having the right of redemption under the laws of this state, or, that there had been an entire omission to list or assess the property, or to levy the taxes, or to give notice of the sale, or to sell the property; but no person shall be permitted to question the title acquired by a treasurer's deed without first showing that he, or the person under whom he claims title, had title to the property at the time of the sale, or that the title was obtained from the United States or this state after the sale, and that all taxes due upon the property have been paid by such person, or the person under whom he claims title as aforesaid;

In case of mistake or fraud. provided, that in any case where a person had paid his taxes, and through mistake in the entry made in the treasurer's books or in the receipt, the land upon which the taxes were paid was afterwards sold, the treasurer's deed shall not convey the title; provided further, that in all cases where the owner of lands sold for taxes shall resist the validity of such tax title, such owner may prove fraud committed by the officer selling the same or in the purchaser to defeat the same, and if fraud is so established such sale and title shall be void.

EFFECT OF THE DEED: The title conveyed by the tax sale, is not derivative, but a new title in the nature of an independent grant by the sovereign authority, and the purchaser takes free from any incumbrances, claims or equities connected with the prior titles: *Crum v. Cotting*, 22-411.

The purchaser takes all the interest of the state, and county, in the property, and therefore takes it free from the liens of all taxes unpaid at the date of sale: *Bowman v. Thompson*, 36-505.

Such prior taxes cease to be a lien, and a subsequent sale therefor would be void: *Preston v. Van Gorder*, 31-250; and see notes to § 871. But where a party purchased land subsequently to a tax sale thereof, and then procured the assignment to himself of the tax certificate, held, that the land was not, in his hands, discharged from the lien of taxes due prior to the sale, and by mistake omitted in making such sale, but that the assignment of the certificate operated merely as a redemption from the sale: *Bowman v. Eckstein*, 46-533.

In cities acting under a special charter which authorized a separate sale by the city for city taxes, held, that a sale for state and county taxes did not divest the property of the lien of such

city taxes, and that the purchaser took subject thereto: *Dennison v. City of Keokuk*, 45-266.

It is the deed and not the sale, that vests the title in the purchaser: *Lake v. Gray*, 35-44. Until the deed is executed the title remains in the original owner: *Williams v. Heath*, 22-519.

THE DEED AS EVIDENCE: The provisions of this section as to the effect of the deed as evidence apply in equity as well as at law: *Clark v. Thompson*, 37-536.

The tax deed may be made presumptive evidence of the regularity and validity of all prior proceedings; and as to minor matters relating to the mode or manner of exercising the power of taxation, which may be dispensed with, it may be made conclusive; but there are some indispensable requisitions which must be observed, and as to these the deed cannot be made conclusive: *Allen v. Armstrong*, 16-508.

The corresponding section of the Revision (§ 784), which declared that the tax deed should be conclusive evidence of the regularity of all prior proceedings, held, unconstitutional, in so far as it attempted to make the deed conclusive as to the existence of the essential

prerequisites of the taxing power, such as assessment, levy, sale, etc., as depriving a person of his property without due process of law; but it was held that as to non-essentials or matters simply directory, the deed may be made conclusive; also, held, that it was competent for the legislature to make such deed *prima facie* evidence of its own validity and the regularity of prior proceedings: *McCready v. Sexton*, 29-356, 385; and see *Martin v. Cole*, 38-141; *Immegart v. Gorgas*, 41-439.

The deed cannot be made conclusive as to the fact of assessment: *Powers v. Fuller*, 30-476.

THE DEED PRIMA FACIE EVIDENCE: The deed is *prima facie* evidence of assessment. The fact that the assessment book does not show all the facts necessary to establish the assessment does not prove that such facts do not exist: *Genthaler v. Fuller*, 36-604.

The deed is *prima facie* evidence as to the fact of sale: *Leavitt v. Watson*, 37-93; and of the fact of assessment: *Mudson v. Sexton*, 37-562.

Where the deed shows on its face that it was made at a sale begun on the first Monday of a month subsequent to October, it is *prima facie* evidence that some of the reasons mentioned in § 886 existed for commencing the sale at such subsequent day: *Lorain v. Smith*, 37-67, and the party attacking the title must at least show the non-existence of such facts: *Lore v. Welch*, 33-192; *Eldridge v. Kuehl*, 27-160.

THE DEED CONCLUSIVE EVIDENCE: The deed is conclusive as to the notice or advertisement: *Allen v. Armstrong*, 16-508; *Mudson v. Sexton*, 37-562; *Scofield v. McDowell*, 47-129; *Bullis v. Marsh*, Dec. T., 1879; *Shawler v. Johnson*, 52-473, and is conclusive as to copy of advertisement having been filed, etc., as provided by § 881: *Hurley v. Pownell*, 31-64; also conclusive as to manner of assessment: *Easton v. Perry*, 37-681; and as to manner of sale: *Ware v. Litt'e*, 35-234; *Smith v. Easton*, 37-584; as that it was not in gross; see *infra* under "sale in gross." It is conclusive as to the regularity of prior proceedings: *Leavitt v. Watson*, 37-93; *Martin v. Cole*, 38-141; and as to the regularity of the assessment, listing and levy: *Robinson v. First National Bank, etc.*, 48-354. It is conclusive that the sale was made at the proper time: *Clark v. Thompson*, 37-536;

Phelps v. Mead, 41-470; *Shawler v. Johnson*, 52-473. And a mistaken recital as to date of sale will not invalidate the deed: *Hulbert v. Dyer*, 36-474. The assessment, levy and sale being admitted in fact, the deed is conclusive as to the manner thereof: *Bulkley v. Callanan*, 32-461.

The deed is conclusive as to manner of sale to only a limited extent. It is always competent to defeat it by showing fraud of the officer or purchaser at such sale: *Butler v. Delano*, 42-350; *Thompson v. Ware*, 43-455; *Chandler v. Keeler*, 46-596.

A SALE IN GROSS: A sale in gross of tracts which are distinct or separately assessed is illegal: *Penn v. Clemans*, 19-372; *Corbin v. DeWolf*, 25-124; *Martin v. Cole*, 38-141, and a tax deed showing upon its face a sale of distinct tracts in gross is void: *Boardman v. Bourne*, 20-134; *Byam v. Cook*, 21-392; *Ferguson v. Heath*, 21-438; *Harper v. Sexton*, 22-442; *Ackley v. Sexton*, 24-320; *Hulbert v. Dyer*, 36-474; *Gray v. Coan*, 30-536; but the deed is not conclusive that the sale was made in gross, and the sale may be valid although the deed is void: *Ware v. Thompson*, 29-65.

A sale in gross of tracts larger than forties, if assessed to a known owner is not void, see notes to § 871, and unless it appears from the deed that the owner was unknown, that fact will not be presumed: *Smith v. Easton*, 37-584.

Where the deed shows a sale in parcels, it is conclusive, and proof that the sale was actually in gross will not be received: *Rima v. Corcan*, 31-125; *Sibley v. Bullis*, 40-429; *Clark v. Thompson*, 37-536; *Chandler v. Keeler*, 44-371.

DEED VOID FOR MISTAKE OR FRAUD: Proof of payment of taxes before sale will defeat the purchaser's title: *Gaylord v. Scarff*, 6-179. In such case the deed is void, and an action by the owner to recover the property conveyed thereby is not barred by § 902: *Patton v. Luther*, 47-236; and see notes to § 902.

If it be shown that the land was in fact redeemed, the deed will be void, notwithstanding a failure of the officer to make proper entry of redemption: *Fenton v. Way*, 40-196.

The defense of fraud contemplated in the last proviso of the section may be shown to defeat the title whenever, in any case the tax title is resisted by the owner, and it is not necessary for

the owner to show that the taxes have been paid: *Corbin v. Beebe*, 36-336; *Miller v. Corbin*, 46-150.

As to what constitutes sufficient fraud, &c., to invalidate a sale, see notes to § 871.

PURCHASER WITHOUT NOTICE OF FRAUD PROTECTED: A tax title which is void for fraud, as provided in the last clause of this section, will nevertheless be held good in the hands of a purchaser for value without notice of such fraud; the word "void" being construed as *voidable*: *Van Shaack v. Robbins*, 36-201; *Sibley v. Bullis*, 40-429; *Ellis v. Peck*, 45-112, and generally a purchaser in good faith from the tax purchaser, without notice of irregularities, will not be affected by the fact that the sale was in gross, or not publicly made; *Martin v. Ragdale*, 49-589.

A grantee by quitclaim deed, of a party holding a tax title void for fraud, takes subject to all equities against his grantor: *Watson v. Phelps*, 40-482; *Besore v. Dosh*, 43-211, 212; *Springer v. Bartle*, 46-688.

PURCHASER MAY RECOVER FROM OWNER AMOUNT PAID AT FRAUDULENT SALE: As the deed vests in the purchaser all the right, title and interest of the state and county, the tax purchaser may, upon his deed being declared void on account of fraud or other defect in the sale, recover from the owner the full amount which the latter would have to pay the treasurer to satisfy the taxes for which the sale was made, if they had not been paid by the purchaser: *Everett v. Beebe*, 37-452; *Light v. West*, 42-138; *Besore v. Dosh*, 43-211; *Sexton v. Henderson*, 45-160; *Miller v. Corbin*, 46-150; *Springer v. Bartle*, 46-688. But this rule has no application where the land was not subject to taxation for the year for the taxes of which it was sold: *Sully v. Poorbaugh*, 45-453.

But such tax sale purchaser is only subrogated to the rights of the county, and therefore his action against the owner to recover the taxes paid must be brought within five years after such tax's become delinquent: *Sexton v. Peck*, 43-250; *Brown*,

v. Painter, 44-368; *Thompson v. Savage*, 47-522; *Hamilton v. City of Dubuque*, 50-213.

As to the recovery of taxes paid by the purchaser subsequently to the acquisition of the void tax title; see notes to § 889.

IN GENERAL: As to the right of the owner who has not paid all the taxes due upon the land in controversy, to question the validity of the tax sale: See *Miller v. Corbin*, 46-150.

It is competent for the legislature to declare that the acts of *de facto* officers shall be valid: *Allen v. Armstrong*, 16-508.

The tax deed is competent evidence of the assignment of the certificate of purchase to the grantee of the deed. (See form of deed given in previous section): *Stahl v. Roost*, 34-475.

The fact that the treasurer does not proceed to collect the taxes by distress and sale as provided in § 859 will not render invalid a deed made in pursuance of a subsequent sale of land therefor; as to that matter the deed is conclusive: *Stewart v. Corbin*, 25-144.

The holder of a tax deed to unoccupied property is presumed to have constructive possession thereof: *Morgan Co. v. Blair*, 51-447, and see notes to § 902.

A stranger to the title cannot, as against a tax deed set up the limitation provided in § 902: *Lockridge v. Daggett*, 54-332.

A tax title acquired by a tenant in common upon the common property, will inure to the benefit of his co-tenants. He cannot thereby defeat their title: *Weare v. Van Meter*, 42-128; *Flinn v. McKinley*, 44-68; *Fallon v. Chidester*, 46-588.

But where the joint owners were not in possession, and one of them bought in an outstanding tax title, held that their joint title had become merged in the superior outstanding title and either might purchase for his own benefit: *Alexander v. Sully*, 50-192.

As to right of treasurer to execute a second deed when the first is imperfect or irregular, see notes to § 895.

SEC. 898. The provisions of this title shall not affect sales here-tofore made, or tax deeds given in pursuance of sales made before the taking effect of this code.

Therefore, held, that notice as required in § 894 was not necessary, although the deed was not executed

until after the taking effect of the Code: *Robinson v. First National Bank, &c.*, 48-354.

SALES WRONGFULLY MADE.

SEC. 899. When, by mistake or wrongful act of the treasurer, land has been sold on which no tax was due at the time, or whenever land is sold in consequence of error in describing such land in the tax receipt, the county is to hold the purchaser harmless by paying him the amount of principal and interest and costs to which he would have been entitled had the land been rightfully sold, and the treasurer and his bondsmen will be liable to the county to the amount of his official bond; or the purchaser, or his assignee, may recover directly of the treasurer, in an action brought to recover the same in any court having jurisdiction of the amount, and judgment shall be against him and his bondsmen; but the treasurer or his bondsmen shall be liable only for his own or his deputies' acts.

County to hold
purchaser
harmless.
R. § 785.
C. '51, § 509.

The owner by voluntarily redeeming from such sale does not become chaser against the county: *Morris v. County of Sioux*, 42-416, 418. subrogated to the rights of the pur-

[Sec. 900 was repealed by 16th G. A., ch. 145, and a substitute enacted; as a substitute for this, the following was enacted:]

[Seventeenth General Assembly, Chapter 101.]

SEC. 1. Whenever any school or university land bought on credit, is sold for taxes, the purchaser at such tax sale, shall only acquire the interest of the original purchase in such lands, and no sale of any such lands for taxes, shall prejudice the rights of the state or the university therein, or preclude the recovery of the purchase money, or the interest due thereon, and in all cases, where real estate is mortgaged or otherwise encumbered to the school or university fund, the interest of the person who holds the fee alone, shall be sold for taxes, and in no case shall the lien or interest of the state be affected by any sale of such encumbered real estate, made for taxes.

Interest ac-
quired by pur-
chaser at tax
sale of school
lands, etc., etc.
R. §§ 810, 811.

SEC. 2. The foregoing provisions shall be extended to, and shall include all lands exempted from taxation by the provisions of this title, including lands of the United States and of this state, or of any county, township, city, incorporated town or school district, including agricultural college lands, swamp lands, burial grounds, fair grounds, public squares, public groves, or public ornamental grounds, and to any legal or equitable estate therein held, possessed or claimed for any public purpose, and no assessment or taxation of such lands, nor the payment of any such taxes, by any person, or the sale and conveyance for taxes of any such lands, shall in any manner affect the right or title of the public therein, or prejudice the public thereto, nor shall any such payment or sale, confer upon the purchaser, or person who pays such taxes, any right or interest in such land, adverse or prejudicial to the public right, title or ownership thereto; provided, that this section shall not in any manner affect or prejudice the rights of any person or party to any action now pending, which was commenced prior to the 4th day of July, 1876.

Same as to
other public
lands.

As against a mortgage to the school or university fund, only the interest of the person holding the fee title can be sold for taxes: *Crum v. Cotting*, 22-411. Such purchaser takes sub-

Right of pub-
lic not preju-
diced by tax
sale, etc.

Proviso:
Not to affect
action pend-
ing.

ject to the mortgage: *Jasper Co. v. Rogers*, 17-254; and acquires only the right to redeem from such mortgage: *The State v. Shaw*, 28-67, 76. The state purchasing at foreclosure

When land not subject to taxation is sold. R. § 789.

sale under such mortgage takes free from the lien of delinquent taxes and a conveyance from it passes title to the purchaser discharged from such liens: *Helphrey v. Ross*, 19-40; *Milner v. Gregg*, 26-75.

Any purchaser at a foreclosure sale under such mortgage, equally with the state, takes free from the lien of delinquent taxes: *Lovelace v. Berryhill*, 36-379.

SEC. 901. Whenever it shall be made to appear to the satisfaction of the county treasurer, either before the execution of a deed for real property sold for taxes, or if the deed be returned by the purchaser, that any or tract or lot was sold which was not subject to taxation, or upon which the taxes had been paid previous to the sale, he shall make an entry opposite such tract or lot on the record of sales, that the same was erroneously sold, and such entry shall be evidence of the fact therein stated. And in such cases the purchase money shall be refunded to the purchaser as provided by this chapter.

Action must be brought within five years after recording deed: exceptions. R. § 790.

LIMITATION OF ACTIONS.

SEC. 902. No action for the recovery of real property sold for the non-payment of taxes shall lie, unless the same be brought within five years after the treasurer's deed is executed and recorded as above provided; *provided*, that where the owner of such real property sold as aforesaid, shall, at the time of such sale be a minor or insane, or convict in the penitentiary, five years after such disability shall be removed shall be allowed such person, his heirs, or legal representatives to bring their action.

This section applies only to cases where real property has been "sold for the non-payment of taxes," and therefore the limitation does not run where there has been actually no sale whatever: *Case v. Albee*, 28-277; nor where the taxes for which the sale was made had been, in fact, paid: *Patton v. Luther*, 47-236; nor where the tax title is void by reason of there having been no assessment, levy, or sale: *Early v. Whittingham*, 43-162; *Nichols v. McGlathery*, 43-189.

But the fact that the deed shows on its face irregularities in the manner of assessment, levy, or sale will not prevent the limitation from running against it: *Thomas v. Stickle*, 32-71; *Douglass v. Tullock*, 34-262; *Peirce v. Ware*, 41-378; *Bullis v. Marsh*, Dec. T., 1879.

The limitation applies to an action by the holder of the deed, as well as to one brought by the original owner of the land: *Brown v. Painter*, 38-456; *Laverty v. Sexton*, 41-435; *Barrett v. Love*, 43-103.

After the limitation has run against the tax title, the original owner remaining in possession, may maintain an action against the holder of such title to remove the cloud of the tax-deed and quiet the title. Such action

is not barred by the limitation provided in this section: *Peck v. Sexton*, 41-566; *Laverty v. Sexton*, 41-435; *Wallace v. Sexton*, 44-257; *Patton v. Luther*, 47-236; *Tabler v. Callanan*, 49-362. Also, the holder of the tax deed being in possession after the expiration of the period of limitation, may have his title quieted as against the original owner: *Wright v. Lacy*, 52-248; *Shawler v. Johnston*, 52-473.

This section does not bar an action brought after the expiration of the period of limitation by the holder of the tax title, against a stranger to the title or a trespasser: *Lockridge v. Daggett*, 47-679; S. C. 54-332.

It is not intended by this section to secure to the owner five years within which to attack the tax title, and the holder of the tax deed may, within that time, institute proceedings to quiet his title against such owner: *Stevenson v. Bonesteel*, 30-2-6.

The limitation commences to run at the execution and recording of the tax deed, irrespective of the question of possession, and if at that time the property is unoccupied, and during the five years the owner of the fee takes actual possession and holds it

until the expiration of the period of limitation, the right of the holder of the tax title to recover under his deed is completely barred: *Barrett v. Love*, 43-103. But if the land remains unoccupied until the expiration of the period of limitation, the title of the holder of the tax deed becomes complete, and an action by him against the original owner taking possession after that time is not barred under this section: *Moingona Coal Co. v. Blair*, 51-447; *Lewis v. Soule*, 52-11; *Bullis v. Marsh*, Dec. T., 1879; *Goslee v. Tearney*, 52-455.

Under Rev. § 790, which limited

the action to five years from "the date of the sale," held that "sale" meant a *complete sale*, and that the limitation did not commence to run until the delivery and recording of the tax deed: *Eldridge v. Kuehl*, 27-160; *Henderson v. Oliver*, 28-20; *McCready v. Sexton*, 29-356, 373; *Thorn-ton v. Jones*, 47-397; also, held that the purchaser could not, by his own act in failing to take a deed when he became entitled thereto, prevent the limitation commencing to run against him, and that it would run from the time he became entitled to a deed: *Hintrager v. Hennessey*, 46-600.

SEC. 903. In all suits and controversies involving the question of title to real property held under and by virtue of a treasurer's deed, all acts of assessors, treasurers, auditors, supervisors, and other officers *de facto* shall be deemed and construed to be of the same validity as acts of officers *de jure*. Acts of officers in fact valid. R. § 786.

See *Pierce v. Weare*, 41-378.

SEC. 904. No sale of real property for taxes shall be considered invalid on account of the same having been charged in any other name than that of the rightful owner, if the said property be in other respects sufficiently described. When assessed to wrong person. R. § 787.

SEC. 905. The books and records belonging to the offices of the county auditor and county treasurer, or copies thereof, properly certified, shall be deemed sufficient evidence to prove the sale of any real property for taxes, the redemption thereof, or the payment of taxes thereon. Certified copies of books evidence. R. § 788.

PEDDLERS.

SEC. 906. A tax for state purposes shall be levied upon peddlers of merchandise not manufactured in this state, for a license to peddle throughout the state for one year as follows: upon each peddler of watches or jewelry, or either of them, thirty dollars; upon each peddler of clocks, fifty dollars; upon each peddler of dry goods, fancy articles, notions, or patent medicines, as follows: upon each peddler thereof, ten dollars; upon each peddler who pursues his occupation with a vehicle drawn by one animal, twenty-five dollars; if drawn by two and less than four, fifty dollars; if drawn by four or more animals, seventy-five dollars; provided, however, that nothing in this section shall apply to wholesale dealers in any of the above enumerated articles, who use wagons for the delivery of goods sold at wholesale prices and by the box or package. Amount of tax. R. § 791. C. 51, § 510

[As amended by 15th G. A., ch. 62, adding the proviso.]

SEC. 907. Such license may be obtained from the auditor of the county upon paying the proper tax to the treasurer thereof, and may issue for a less period than one year for the proportionate amount of tax, and all such licenses shall state the date of the expiration of the same; and any person so peddling without a license, or after the expiration of his license, is guilty of a misde-

Peddler's tax not to be exacted of wholesale dealers.

License: how obtained; penalty for selling without. L. § 791. C. 51, §§ 511, 512.

meanor, and the person actually peddling is liable, whether he be the owner of the goods or not. Upon conviction of peddling without a license as aforesaid, the offender shall forfeit and pay to the county treasurer, in addition to the fine imposed upon him for the misdemeanor, double the amount of license for one year as fixed by section nine hundred and six of this chapter.

PUBLIC SHOWS.

[Sixteenth General Assembly, Chapter 131.]

License to exhibit in county outside of city.

SEC. 1. Before any person can exhibit any traveling show or circus, not prohibited by law, or show any natural or artificial curiosity or exhibition of horsemanship in a circus or otherwise, for any price, gain, or reward, in any county outside of the limits of any city or incorporated town, he shall obtain a license therefor from the county auditor, upon the payment to the county treasurer of such sum as may be fixed by the board of supervisors, not exceeding one hundred dollars for each and every place in the county at which such show or circus may exhibit.

Penalty for exhibiting without license.

SEC. 2. If any person shall exhibit any show above contemplated without having first obtained such license, he shall be deemed guilty of a misdemeanor and punished accordingly, and shall forfeit and pay double the amount fixed for such license, for the use and benefit of the school fund.

CHAPTER 3.

PROVISIONS FOR THE SECURITY OF THE REVENUE.

County responsible for state tax.
lt. § 793.

SECTION 908. Each county is responsible to the state for the full amount of tax levied for state purposes, excepting such amounts as are certified to be unavailable, double, or erroneous assessments, as hereinafter provided.

When treasurer i. defaulter.
lt. § 794.

SEC. 909. If any county treasurer prove to be a defaulter to any amount of state revenue, such amount shall be made up to the state within the next three coming years by additional levies, in such manner as to annual amounts as the board of supervisors may direct. In such cases the county can have recourse to the official bond of the treasurer for indemnity.

Whether the state may have recourse to the treasurer's bond, *quære:* | *The State v. Henderson*, 40-242.

Interest on warrants: how received.
R. § 795.

SEC. 910. When interest is due and allowed by the treasurer of any county, or the state treasurer, on the redemption of auditor's warrants, or county warrants, the same shall be receipted on the warrants by the holder of the same, with the date of the payment, and no interest shall be allowed by the auditor of state or board of supervisors except such as is thus receipted.

SEC. 911. If the state treasurer, or any county treasurer, discount auditor's warrants at less than the amount due thereon, either directly or indirectly, or through third persons, they shall be liable to a fine not exceeding one thousand dollars, to be prosecuted as other fines.

The offense defined in this section are applicable to cases where no loss and the following is different from to the state or county occurs: *The that under § 3903. These sections State v. Brandt* 41-593, 612.

SEC. 912. County treasurers shall be liable to a like fine for loaning out, or in any manner using for private purposes, state, county or other funds in their hands, except that whenever permitted by the boards of supervisors of their respective counties, by resolution entered of record, they may deposit any such funds in any bank or banks chartered by the laws of the state, or any national or private banks in this state, to any amount not exceeding an amount to be fixed by such resolution; provided, that before any such deposit is made the bank in which it is proposed to make the same, shall first file a bond with sureties to be approved by the treasurer and the board of supervisors in double the maximum amount permitted to be deposited as aforesaid, and conditioned to hold the treasurer making the deposits of the county, harmless from all loss by reason of such deposit or deposits, said bond shall be filed with the county auditor, and action may be brought thereon either by said treasurer or the county, as the board of supervisors may elect. And the state treasurer shall be liable to a fine of not more than ten thousand dollars for a like misdemeanor, to be prosecuted by the attorney-general in the name of the state. But nothing done under the provisions of this act shall alter or affect the liability of the treasurer or the securities on his official bonds.

[Substitute for the original section, 17th G. A., ch. 155.]

Under this section a county treasurer is prohibited from depositing county funds in a bank, and where such deposit was made and the funds lost by the failure of the bank, the treasurer was held liable therefor; (*Decided under the original section.*) *Lovry v. Polk Co.*, 51-50.

PAYMENTS BY COUNTY TREASURER.

SEC. 913. At their regular meetings in January and June of each year, the board of supervisors shall make a full and complete settlement with the county treasurer, and they shall make and certify to the auditor of state, all credits to the treasurer for double or erroneous assessments, and unavailable taxes, also all dues for state revenue, interest, or delinquent taxes, sales of land, peddler's licenses, and other dues, if any; also the amounts collected for these several items, and revenues still delinquent, each year to itself. Said reports shall be forwarded by mail.

This settlement with the county is conclusive upon the treasurer and his sureties, and they cannot show that it was fraudulent for the purpose of showing that the delication subsequently appearing had really occurred

before such settlement: *Boone Co. v. Jones*, 54-699. (This case criticised, and many other cases upon the same point cited, 10 Cent. Law Jour. 18 and *id.* 99.) See, also, notes to § 690.

Penalty for discounting warrants.
R. § 796.

Penalty for loaning public funds.
R. § 797.

Board of supervisors may allow deposit of funds in bank.

Proviso: bank to receive deposit shall file bond.

State treasurer.

Supervisors to settle with treasurer.
R. § 798.
C. 51, §§ 157-8.

SEC. 914. The treasurer of each county shall, on or before the fifteenth day of each month, prepare a sworn statement of the amount of money in his hands on the first day of that month belonging to the state treasury, and forward the same by mail to the auditor of state, and he shall, each year, unless otherwise directed by the state auditor, pay into the state treasury, on or before the fifteenth day of March, all the money due the state remaining in his hands on the first day of March, and on or before the fifteenth day of November, all the money due the state remaining in his hands on the first day of November; he shall also, at any time when directed by the auditor of state, forthwith pay into the state treasury, or the treasury of any county, any or all the money due the state and remaining in his hands. In case the treasurer of any county shall fail to prepare and forward the statement required in this section, he shall forfeit and pay for each and every failure a sum not less than one hundred nor more than five hundred dollars, to be recovered in an action brought in the name of the state auditor, against him and his bondsmen, in any court of record.

[As amended by 17th G. A., ch. 122, § 1.]

[SEC. 915, as to method in which county treasurer might be required to make payments to state auditor, repealed; 17th G. A. ch., 122, § 2.]

SEC. 916. The state auditor shall make and transmit to each county auditor, on the first day of May of each year, a statement of the county treasurer's account with the state treasurer, which account shall be submitted by said auditor to the board of supervisors at their next meeting, and if they find the same to be incorrect in any particular, they shall forthwith certify the facts in relation to the same to the auditor of state.

SEC. 917. When a county treasurer goes out of office, he shall make a full and complete settlement with the board of supervisors, and deliver up all books, papers, moneys, and all other property appertaining to the office, to his successor, taking his receipt therefor. The board of supervisors shall make a statement, so far as the state dues are concerned, to the auditor of state, showing all charges against the treasurer during his term of office, and all credits made, the delinquent taxes and other unfinished business charged over to his successor, and the amount of money paid over to his successor, showing to what year and to what account the amount so paid over belongs. They shall also see that the books of the treasurer are correctly balanced before passing into the possession and control of the treasurer elect.

SEC. 918. The state treasurer shall keep each distinct fund coming into his possession as public money, in a separate apartment of his safe, and, at each quarterly settlement with the state auditor, he shall count each fund in the presence of the auditor to see if the same agrees with the balance found on the books. The total amount acknowledged to belong to each fund shall be exhibited before the count. County treasurers shall account with such persons as the board of supervisors may direct in like manner, and a report of such accounting shall be made to the board at their next meeting, by the person so appointed by them.

When and how
payments made
to treasurer of
state: penalty
for failure.
R. § 799.

Duty of auditor
of state and su-
pervisors.
R. § 801.

Treasurer to
settle with su-
pervisors and
deliver to suc-
cessor all pub-
lic property.
R. § 802.

State treasurer
keep funds
separate: state
and county to
account.
R. § 804.

SEC. 919. If any county auditor, or county treasurer, or other officer shall neglect or refuse to perform any act or duty specifically required of him by any provision of this title, such officer shall be deemed guilty of a misdemeanor and indicted therefor; and, being found guilty, shall be fined in any sum not exceeding one thousand dollars, for the payment whereof his bondsmen shall also be liable; and he and his bondsmen shall also be liable to an action on his official bond for the damages sustained by any person through such neglect or refusal.

Penalty for
failure to per-
form duty.
R. & L 744, 749,
805.
12 G. A. ch. 75,
§ 3.

[Sixteenth General Assembly, Chapter 113.]

SEC. 1. The auditor of state *be and he* is hereby authorized and ^{Duty of auditor.} empowered to draw his warrants on the state treasury, in favor of any county in this state for the amount of any excess in any fund or tax due the state from said county excepting the state taxes.

SEC. 2 Whenever, it shall appear from the books in his office, <sup>To forward
warrant for
any excess to
county enti-
tled.</sup> that there is a balance due any county, and in excess of any revenue due the state, except state taxes, it shall be his duty to draw his warrant for such excess, in favor of the county entitled thereto, and forward the said warrant by mail or otherwise, to the county auditor of the county to which said money belongs, and charge the amount so sent to the said county.

SEC. 3. The county auditor to whom said warrant is sent, shall <sup>Duty of county
auditor.</sup> immediately upon receipt thereof deliver the same to the county treasurer of his county and charge the amount of the warrant to said county treasurer in the same manner as any other fund is charged on the books of his office, and the county auditor shall also, on receipt of said warrant from the auditor of state acknowledge receipt of the amount of said warrant to said state auditor.

TITLE VII.

OF HIGHWAYS, FERRIES, AND BRIDGES.

CHAPTER 1.

OF ESTABLISHING HIGHWAYS.

Jurisdiction over.
R. § 819.
C. 51, § 514.

Width.
R. § 820, 821.
C. 51, §§ 515, 516.

SECTION. 920. The board of supervisors has the general supervision over the highways in the county, with power to establish and change them as herein provided, and to see that the laws in relation to them are carried into effect.

SEC. 921. Highways hereafter established must be sixty-six feet in width, unless otherwise directed; but the board of supervisors may, for good reasons, fix a different width, not less than forty feet, and they may be increased or diminished within the limits aforesaid, altered in direction, or discontinued, by pursuing substantially the steps herein prescribed for opening a new highway.

The auditor has no power to establish a highway of less width than sixty-six feet and if he attempt to do so, the board of supervisors may set aside his action: *The State v. Wagner*, 45-482.

The fact that the road as establish-

ed. is wider than authorized does not render the order establishing it void. It is an irregularity which cannot be taken advantage of in a collateral proceeding: *Knowles v. City of Muscatine*, 20-248.

Petition.

SEC. 922. Any person desiring the establishment, vacation, or alteration of a highway, shall file in the auditor's office of the proper county, a petition in substance as follows: To the board of supervisors of county. The undersigned asks that a highway, commencing at, and running thence and terminating at be established, vacated, or altered (as the case may be).

The petition should not specify the width of the proposed highway, and such specification is surplusage: *The State v. Wagner*, 45-482, nor need it follow the precise language of the statute: *McCollister v. Shuey*, 24-

362; and a petition asking for the appointment of a commissioner, etc., instead of for the establishment of the highway, held, not so materially defective as to invalidate the proceedings: *The State v. Pitman*, 38-252.

Bond.
R. § 820.
C. 51, § 521.

SEC. 923. Before filing such petition the auditor shall require the petitioner to file in his office a bond, with sureties to be approved by such auditor, conditioned that all expenses growing out of the application will be paid by the obligors in case the contemplated highway is not finally established, altered, or vacated, as asked in the petition.

A failure to require the bond here | proceedings: *Woolsey v. Board of mentioned will not invalidate the Supervisors, &c.*, 32-130.

SEC. 924. If satisfied that the foregoing prerequisites have been complied with, the auditor shall appoint some suitable and disinterested elector of the county a commissioner to examine into the expediency of the proposed highway, alteration, or vacation thereof, and report accordingly.

Auditor appointed
point commissioner.
R. § 828.
C. '51, § 523.

DUTY OF COMMISSIONER.

SEC. 925. The commissioner is not confined to the precise matter of the petition, but may inquire and determine whether that or any highway in the vicinity, answering the same purpose and in substance the same, be required; but such highway must not be established through any burying ground which is exempt from execution; nor through any garden, orchard, or ornamental ground contiguous to any dwelling house, nor so as to cause the removal of any building without the consent of the owner.

Not confined to matter of petition.
R. § 831.
C. '51, § 525.
12 G. A. ch. 47.

[As amended by inserting the word "nor" after the word "house" in the seventh line; 18th G. A., ch. 50.]

Under the corresponding section of Code of 1851 (§ 525), held, that the commissioner had no authority to lay out a highway beyond the *termini* fixed in the petition, and the proceedings as to any such portion would be void: *The State v. Molly*, 18-525.

SEC. 926. In forming his judgment, he must take into consideration both the public and private convenience, and also the expense of the proposed highway.

Convenience considered.
R. § 831.
C. '51, § 526.

SEC. 927. After a general examination, if he shall not be in favor of establishing the proposed highway, he will so report, and no further proceedings shall be had thereon.

An adverse report ends all proceedings under the petition, and the report of another commissioner appointed by the auditor would have no validity: *Cook v. Trigg*, 52-709.

SEC. 928. If he deems such establishment expedient, he may proceed at once to lay out the highway as hereinafter directed, and may report accordingly, if the circumstances of the case are such as to enable him to do so, without pursuing the course pointed out in the next section.

To lay out highway.
R. § 833.
C. '51, § 528.

SEC. 929. If the precise location of the highway cannot be otherwise given, he must cause the line of the highway to be accurately surveyed and plainly marked out.

Survey made.
R. § 834.
C. '51, § 529.

SEC. 930. Any commissioner, other than the county surveyor, must be sworn to faithfully and impartially discharge his duty as such commissioner, and, after being thus qualified, he shall have power to swear the assistants employed to a faithful and impartial performance of their respective duties in laying out the highway described in his commission.

Commissioner sworn.
R. § 835.
C. '51, § 530.
14 G. A. ch. 27.

That the officer by whom the commissioner was sworn was not qualified to administer oaths is no such irregularity that the proceedings will be set aside on that account: *Woolsey v. Board of Supervisors, &c.*, 32-130.

Mile posts and stakes set up.
R. § 836.
C. 51, § 531.

SEC. 931. Mile posts must be set up at the end of every mile and the distance marked thereon, and stakes must be set at each change of direction, on which shall be marked the bearing of the new course. Stakes must also be set at the crossing of fences and streams, and at intervals in the prairie, not exceeding a quarter of a mile each; in the timber, the course must be indicated by trees suitably blazed.

The provisions of this section and the one following are directory only, and a failure to comply with them will not render the proceedings illegal or void. Whether it is intended that

they shall be followed when the commissioner proceeds to lay out the highway without the aid of a surveyor (under § 928), may well be questioned: *McCollister v. Shuey*, 24-362.

Bearing trees: monuments.
R. § 837.
C. 51, § 532.

SEC. 932. Bearing trees must, when convenient, be established at each angle and mile post, and the position of the highway relative to the corners of sections, the junction of streams, or any other natural or artificial monument, or conspicuous object, must, as far as convenient, be stated in the field notes and shown on the plat.

Plat and field notes.
R. § 838.
C. 51, § 533.

Report: day fixed for claiming damages.
R. §§ 840, 841.
C. 51, §§ 535-6.

SEC. 933. A correct plat of the highway, together with a copy of the field notes of the surveyor, if one has been employed, must be filed as part of the commissioner's report.

SEC. 934. Within thirty days from the day of his appointment, the commissioner must file his report in the auditor's office, and if it be in favor of the establishment of the highway, the auditor must appoint a day, not less than sixty nor more than ninety days distant, when the matter will be acted upon; on or before which day, all objections to the establishment of the highway and claims for damages by reason of the establishment thereof, must be filed with the auditor.

Auditor fix day for commissioner to begin.
R. § 829.
C. 51, § 524.

Where final action appeared to have been had at a date subsequent to the one fixed, held, that it would be presumed that by proper resolution, action was postponed to the day upon which it was had: *Woolsey v. Board of Supervisors, d.c.*, 32-130. The fixing of the date for final hearing less than sixty days distant is an

irregularity which will not invalidate subsequent proceedings, nor render them subject to collateral attack: *The State v. Kinney*, 39-226.

A party whose claim is not filed within the time fixed has no constitutional right to damages. See notes to § 946.

SEC. 935. The time for the commissioner to commence the examination shall be fixed by the auditor, and if he fails to so commence, or to report as prescribed in the preceding section, the auditor may fix another day or extend the time for making such report, or may appoint another commissioner.

Notice served on each land owner or published.

NOTICE—HIGHWAY ESTABLISHED.

SEC. 936. Within twenty days after the day is fixed by the auditor as above provided, a notice shall be served on each owner or occupier of land lying in the proposed highway, or abutting thereon, as shown by the transfer books in the auditor's office, who resides in the county, in the manner provided for the service of original notice in actions at law; and such notice shall be published for four weeks in some newspaper printed in the county, if any such there be, which notice may be in the following form:

To all whom it may concern: The commissioner appointed to locate, vacate, or alter (as the case may be) a highway commenc-

ing at in county, running thence (describe in general terms all the points as in the commissioner's report,) and terminating at..... has reported in favor of the establishment, vacation, or alteration thereof, and all objections thereto or claims for damages must be filed in the auditor's office on or before noon of the day of A. D....., or such highway will be established, vacated, or altered without reference thereto.

I R, County Auditor.

When notice is given to the persons appearing by the transfer books to be the unconditional owners of the land, and also by publication, the jurisdiction becomes complete. Notice to conditional owners, or others not shown by the transfer books, is not necessary: *Wilson v. Hathaway*, 42-173. Such notice should be served personally upon the owner as shown by the transfer books, when he resides in the county, but if he be a non-resident, then upon the actual occupant of the land, although the name of such occupant does not appear from such books: *Alcott v.*

Acheson, 49-569.

A mistake in the notice and petition as to the place of commencement of the road, held to render the proceedings invalid: *Butterfield v. Pollock*, 45-257.

Under Rev. § 824, held that a recital in the record that due notice had been given was *prima facie* evidence of that fact: *The State v. Pitman*, 38-252; also, that failure to give notice as there required rendered the action of the board in establishing the highway void, and notice would not be presumed: *The State v. Anderson*, 39-274.

SEC. 937. If no objections or claims for damages are filed on or before noon of the day fixed for filing the same, and the auditor is satisfied the provisions of the preceding section have been complied with, he shall proceed to establish such highway as recommended by the commissioner upon the payment of costs. If such costs are not paid within ten days, the auditor shall report his action in the premises to the board of supervisors at their next session, who may affirm the action of the auditor or establish such highway at the expense of the county.

Auditor may establish highway.

The auditor has no power to fix the width of a highway established by him at less than sixty-six feet. See § 921, and note.

Under 12 G. A., ch. 160, held, that the action of the auditor was subject

to review by the board: *Brooks v. Payne*, 38-263, and that an appeal from the action of the auditor did not lie, but only from the action of the board: *Newell v. Perkins*, 39-244.

SEC. 938. If the auditor is satisfied the notice has not been served and published as provided in section nine hundred and thirty-six of this chapter, he shall appoint another day and cause such notice to be served or published as provided in said section, and thereafter proceed as provided in the preceding section.

New notice given.

SEC. 939. If objections to the establishment of the highway or claims for damages are filed, the further hearing of the application shall stand continued to the next session of the board of supervisors, held after the commissioners appointed to assess damages have reported.

When referred to supervisors.

The fact that the only claim for damages which is filed is paid, will not authorize the auditor to establish the highway, but the hearing must

be continued to the next meeting of the board: *Ressler v. Hirshire*, 52-568.

DAMAGES CLAIMED.

SEC. 940. When claims for damages are filed, and on the day appointed for filing the same, the auditor must appoint three suitable and disinterested electors of the county as appraisers to view the ground on a day fixed by him, and report upon the amount of damages sustained by the claimants; such report shall be made and filed in the auditor's office within thirty days after the day they are appointed.

Appraisers appointed.
R. § 843. 847.
C. § 51, § 538,
542.
9 G. A. ch. 141.
12 G. A. ch. 160.
§ 2.

Timber growing upon the land appropriated for the purpose of a public highway remains the property of the former owner, and is not to be taken

into account in estimating his damages: *Deaton v. County of Polk*, 9-594.

In writing.
R. § 842.
C. § 537.

SEC. 941. All claims for damages and objections to the establishment, vacation, or alteration of the highway must be in writing, and the statements in the application for damages shall be considered denied in all the subsequent proceedings.

This section and § 946, do not provide in what cases damages shall be allowed, and do not authorize the recovery of damages, either by an ad-

cent property owner, or any other person, for the vacation of a highway: *Brady v. Shinkle*, 40-578; *Ellsworth v. Chickasaw Co.*, *id.* 571.

Appraisers notified.
R. § 844.
C. § 539.

SEC. 942. The auditor shall cause notice of their appointment to be given to each of the appraisers, fixing the hour at which they are to meet at the office of the auditor, or of some justice of the peace therein named.

Vacancies filled.
R. § 845. 846.
C. § 51, § 540-1.

SEC. 943. If the appraisers are not all present within one hour of the time thus fixed, the auditor or justice, as the case may be, shall fill the vacancy by the appointment of others. The appraisers must be sworn to discharge their duty faithfully and impartially.

Time: final action postponed.
R. § 848.
C. § 543.

SEC. 944. Should the report not be filed in time, or should any other good cause for delay exist, the auditor may postpone the time for final action on the subject, and may, if expedient, appoint other commissioners.

Costs.
R. § 850.
C. § 545.

SEC. 945. Should no damages be awarded the applicant therefore, the whole of the costs growing out of his application shall be paid by him.

FINAL ACTION.

Testimony received: establish conditionally.
R. § 851.
C. § 546.

SEC. 946. When the time for final action arrives, the board of supervisors may hear testimony, receive petitions for and remonstrances against the establishment, vacation, or alteration, as the case may be, of such highway, and may establish, vacate, or alter, or refuse to do so, as in their judgment, founded on the testimony, the public good may require. Said board may increase or diminish the damages allowed by the appraisers, and may make such establishment, vacation, or alteration, conditioned upon the payment in whole or in part of the damages awarded, or expenses in relation thereto.

Where two applications are, in effect, for the same road, by different routes, they may be considered together: *Brown v. Ellis*, 26-85.

Where the establishment is conditioned on the payment of the expenses thereof, it is not necessary that the time for such payment be fixed in the

order: *Ibid.*

The question as to the propriety of establishing the road, and the legality of the proceedings to that end, may be reviewed by *ceteriorari*: *McCrory v. Griswold*, 7-248, but an appeal is the only proper method of bringing up the question of damages: *Warner v. Doran*, 30-521; and upon appeal not only the amount of damages, but also the right to any damages, may be determined: *Spray v. Thompson*, 9-40.

If upon an appeal from the action of the board as to the amount of damages, the circuit court increase the amount allowed, the board may reconsider their action and refuse to establish the highway: *Nelson v. Good-ykoontz*, 47-32.

An order for the establishment of the highway, conditioned upon payment of damages, etc., is such a final order as may be appealed from under § 959. It is not necessary to wait for the unconditional order contemplated in the following section: *McNicol's v. Wilson*, 42-185.

A final order once made as here contemplated, assumes the character

of an adjudication as to the establishment of the road, and the amount of damages if any, and the parties cannot again litigate the same question in a new proceeding. The judgment is conclusive until set aside: *Hupert v. Anderson*, 35-578.

Where no claim for damages is filed, or no damages are allowed by the appraisers, or the claim is disallowed because not filed within proper time (§ 934), a party cannot object to the establishment of the highway on the ground that his property is taken without compensation. While he has a constitutional right to compensation, it must be claimed and established in the manner pointed out by law: *McCrory v. Griswold*, 7-248; *Connelly v. Griswold*, 7-418; *Dunlap v. Pulley*, 28-469; *Abbott v. Board of Supervisors*, 36-354.

As to effect of final action had before the expiration of the sixty days provided in § 934, or after the time fixed by the auditor, see notes to that section.

Damages are not to be allowed in case of the vacation of a highway; see note to § 941.

SEC. 947. In the latter case, a day shall be fixed for the performance of the condition, which must be before the next session of the board, and if the same is not performed by the day thus fixed, the board shall, at such session, make some final and unconditional order in the premises.

SEC. 948. Any order made or action taken in the establishment of a highway, shall be entered in the highway record, distinguishing between those made or taken by the auditor, and those by the board of supervisors.

SEC. 949. After the highway has been finally established, the plat and field-notes must be recorded by the auditor, and he shall certify the same to the township clerk, and the township clerk shall certify to and direct the supervisor of highways to have the same opened and worked subject to the provisions of the next section.

[A substitute for the original section, 15th G. A., ch. 19.]

SEC. 950. A reasonable time must be allowed to enable the owners of land to erect the necessary fences adjoining the new highway; and when crops have been planted or sowed before the highway is finally established, the opening thereof shall be delayed until the crop is harvested.

A land-owner is not liable to indictment for obstructing a highway in not removing the fences where a newly established highway crosses

his land, at least until he has had reasonable notice from the supervisor to do so: *The State v. Ratliffe*, 32-189.

SEC. 951. The rights and interests of minors and insane persons, in relation to the establishment, vacation, and alteration of highways, and all matters connected therewith, are under the control of their guardians.

Unconditional order.
R. 2 852.
C. 51, 2 547.

Order entered of record.

Plat and field notes recorded.
R. 2 855.
C. 51, 2 550.

Minors: Insane persons.
R. 2 860.
C. 51, 2 553.

Streets in villages.
12 G. A. ch. 148.

Cities or incorporated towns.
R. § 916.

Lands of state institutions.
12 G. A. ch. 110.
§ 1.

Supervisors to act in concert.
R. § 861.
C. § 51, § 556.

Distinctions abolished; concurrent action required.
R. § 879.

How established.
R. § 858.
C. § 51, § 553.

When survey necessary.
R. § 859.
C. § 51, § 554.

From what taken; how perfected.
R. § 878.

SEC. 952. All public streets of towns or villages not incorporated, are a part of the highway; and all supervisors of highways, or persons having charge of the same, in the respective districts of such towns or villages, shall work the same as provided by law.

SEC. 953. Such portions of all highways as lie within the limits of any city or incorporated town shall conform to the direction and grade and be subject to all regulations of other streets in such town or city.

SEC. 954. Highways or streets shall not be established or opened across the lands reserved by the state for its various institutions lying adjacent thereto, without the express consent of the general assembly.

IN TWO OR MORE COUNTIES.

SEC. 955. The establishment, vacation, or alteration of a highway, either along or across a county line, may be effected by the concurrent action of the respective boards of supervisors in the mode above prescribed; except that the auditor of neither county can make the final order in such case. The commissioners in such cases must act in concert, and the highway will not be deemed established, vacated, or altered in either county until it is so in both.

SEC. 956. Hereafter there shall be no distinction between highways heretofore known as state roads and county roads; both are alike subject to the provisions of this chapter. Highways established by the concurrent action of the board of supervisors of two or more counties, can only be discontinued by the concurrent action of the board of supervisors of the several counties in which the same may be situated, but such highways shall be treated in all other respects as provided in this title.

CONSENT HIGHWAYS.

SEC. 957. Highways may be established without the appointment of a commissioner, provided the written consent of all the owners of the land to be used for that purpose be first filed in the auditor's office; and if it is shown to the satisfaction of the board of supervisors, that the proposed highway is of sufficient public importance to be opened and worked by the public, they shall make an order establishing the same, from which time only shall it be regarded as a highway.

SEC. 958. If a survey for the establishment of the highway named in the preceding section is necessary, the board of supervisors, before ordering such survey, may require the parties asking for the establishment of such highway to pay, or secure the payment of, the expenses of such survey.

APPEALS.

SEC. 959. Any applicant for damages claimed to be caused by the establishment of any highway, may appeal from the final decision of the board of supervisors to the circuit court of the

county in which the land lies; but notice of such appeal must be served on the county auditor within twenty days after the decision is made. If the highway has been established on condition that the petitioners therefor pay the damages, such notice shall be served on the four persons first named in the petition for the highway, if there are that many who reside in the count.

The question as to the amount of damages, or whether any damages should be allowed, should be reviewed on appeal and not by *certiorari*. See notes to § 946.

The twenty days within which notice of appeal may be served, commences to run from the time of making the order contemplated in § 946, and not from the making of the unconditional order mentioned in § 947: *McNichols v. Wilson*, 42-335.

It is not necessary, in order to secure a hearing upon appeal, as to

the amount of damages, that a motion should have been made before the board to set aside the report of the appraisers: *Sigafos v. Talbot*, 25-214.

The question as to the amount of damages may be tried *de novo*, upon appeal: *Prosser v. Wapello Co.*, 18-327.

An appeal lies from the action of the board entirely rejecting a claim for damages: *Vancleave v. Clark*, 37-154: *Spray v. Thompson*, 9-40.

SEC. 960. An appeal may also be taken by the petitioner for the highway as to amount of damages, if the establishment of the highway has been made conditional upon his paying the damages, by his serving notice of such appeal on the county auditor, and applicant for damages within twenty days after the decision of the board of supervisors, and filing a bond in the office of such auditor, with sureties to be approved by him, conditioned for the payment of all costs occasioned by such appeal unless the appellant fails to recover a more favorable judgment in the circuit court than was allowed him by such board. Same.
R. & 874

If the notice is not served upon the applicant within proper time, he may appear and move to dismiss the appeal, and such appearance will not

confer jurisdiction nor waive his rights (explaining *Robertson v. Eldora R. & Coal Co.*, 27-245); *Spurrier v. Wirtner*, 48-486.

SEC. 961. In the cases contemplated in the two preceding sections, the auditor shall, within ten days after the notices aforesaid are served and filed in his office, make out and file in the office of the clerk of said court, a transcript of the papers on file in his office and proceedings of the board in relation to such damages. The claimant for damages shall be plaintiff, and the petitioner for the highway defendant, except the damages have been ordered paid out of the county treasury, in which case the county shall be defendant. Transcript
filed.
R. & 873

It is not proper to make the road itself defendant: *Myers v. Old Mission, &c., Road*, 7-315. Nor is the

county a proper party (except as here provided): *Deaton v. County of Polk*, 9-594.

SEC. 962. The amount of damages the claimant is entitled to, shall be ascertained by said circuit court in the same manner as in actions by ordinary proceedings, and the amount so ascertained shall be entered of record, but no judgment shall be rendered therefor. The amount thus ascertained shall be certified by the clerk to the board of supervisors, who shall, thereafter, proceed as if such amount had been by them allowed the claimant as damages. Proceedings in
circuit court.
R. & 874

When the amount of damages is been originally allowed by them: thus fixed, the board may proceed to *McNichols v. Wilson*, 42-385. final action, as if that amount had

Judgment for costs.
R. § 873.

SEC. 963. If the appeal has been taken by the claimant, the petitioner for the highway, or the county must pay the costs occasioned by the appeal; but the county shall pay only when the damages have been ordered to be paid out of the county treasury. If the petitioner for the highway appeals, he must pay the costs, unless the claimant recovers a less amount than was allowed him by the board, in which case the costs shall be paid by the claimant. Judgment shall be rendered in accordance with the foregoing provisions.

The recovery of costs by the claimant upon his appeal, is not made contingent upon whether the amount of his damages is increased by the circuit court: *Hanrahan v. Fox*, 47-102.

LOST FIELD NOTES.

Re-survey ordered.
R. § 813.

SEC. 964. When by reason of the loss or destruction of the field notes of the original survey, or in cases of defective surveys or record, or in cases of such numerous alterations of any highway since the original survey, that its location cannot be accurately defined by the papers on file in the proper office, the board of supervisors of the proper county may, if they deem it necessary, cause such highway to be re-surveyed, platted, and recorded as hereinafter provided.

Where the necessary steps were taken to establish a road, but the clerk failed to record the field notes, and no record of the final order was found; held, a proper case for the supervisors to order a re-survey: *Balke v. Bailey*, 20-124. But where a highway has never been, in fact, established, a re-survey thereof is of no effect: *Carey v. Weitgenant*, 52-660.

Plat and field notes filed: notice given.
R. § 914.

SEC. 965. A copy of the field notes, together with a plat of any highway surveyed under the provisions of the preceding section, shall be filed in the office of the county auditor, and, thereupon, he shall give public notice by publication in some newspaper published within the county, or, if no paper is published in his county, by posting such notice in five of the most public places in the vicinity of such survey, that such survey has been made, and that at some term of the board of supervisors, not less than twenty days from the publication, they will, unless good cause be shown against so doing, approve of such survey and plat and order them to be recorded as in cases of the original establishment of a public highway.

Power of supervisors: record evidence.
R. § 915.

SEC. 966. In case objection shall be made by any person claiming to be injured by the survey made, the board of supervisors shall have full power to hear and determine upon the matter, and may, if deemed advisable, order a change to be made in the survey. Upon the final determination of the board, or in case no objection be made at the term named in the notice of the survey, they shall approve of the same and cause the field notes and plat of the highway to be recorded as in case of the establishment or alteration of highways, and thereafter such records shall be re-

ceived by all courts as conclusive proof of the establishment and existence of such highway, according to such survey and plat.

SEC. 967. If the same has not been heretofore done in any other manner, the county auditor shall, within six months after this code takes effect, cause every highway in his county, the legal existence of which is shown by the records and files of his office, to be platted, in a book to be obtained and kept for that purpose, and known as the "highway plat-book." Each township shall be platted separately, on a scale of not less than four inches to the mile, and such auditor shall have all changes in or additions to the highways legally established, immediately entered upon said plat-book, with appropriate references to the files in which the papers relating to the same may be found.

SEC. 968. Within the time aforesaid, the auditor shall furnish to the township clerks a certified copy of said plat book, so far as the same relates to their respective townships, which shall be carefully preserved in the office of said clerks. The auditor shall notify said clerks of all changes made in the plat book relative to the highways, so far as the same relate to their townships respectively; on receipt of which, said clerks shall immediately make corresponding changes on the maps in their respective offices.

Clerk to furnish supervisor with | plat of his district, see § 972.

CONSTRUCTION OF CATTLE-WAYS.

[Sixteenth General Assembly, Chapter 111.]

SEC. 1. Upon application by any person to the board of supervisors of any county for permission to construct a cattle-way across, over or under any public highway, the board may grant the same; provided, said cattle-way shall not interfere with the travel upon such highway; but the person who applied for such cattle-way shall construct the same at his own expense and be responsible for all damages that may arise from its construction or from the same not being kept in good condition, and that the grade of the highway over the cattle-way shall not exceed one foot in ten.

SEC. 2. If the person on whose land such cattle-way is constructed, fails to keep the same in good repair, then it shall be the duty of the road supervisor to make all repairs necessary and charge the same to the owner of the land upon which such cattle-way is constructed, and upon his refusal or failure to pay, the supervisor shall recover the same in an action brought in his own name in any court having competent jurisdiction; which money when collected, shall be expended for improving or repairing the public highway, in the road district where such cattle-way is constructed. Provided, that no person shall construct any cattle-way so as to obstruct the freedom of the public in watering at any running stream.

Board of supervisors
may grant permission to construct across highway.
Proviso.

Grade of highway.

If owner of land fails to make repairs: duty of road supervisor.

Proviso: not to obstruct freedom of highway.

CHAPTER 2.

OF WORKING HIGHWAYS.

SECTION 969. The township trustees of each township shall meet on the first Monday in April, or as soon thereafter as the assessment book is received by the township clerk, and on the first Monday in October in each year. At the April meeting said trustees shall determine:—

- R. § 880, 891,
S. 86.
C. 51, 2568.
9 G. A. ch. 96.
§ 5; ch. 163, § 1.
12 G. A. ch. 100,
§ 2.
13 G. A. ch. 20.
1. Upon the amount of property tax to be levied for highways, bridges, guide-boards, plows, scrapers, tools, and machinery adapted to the construction and repair of highways, and for the payment of any indebtedness previously incurred for highway purposes, and levy the same, which shall not be less than one nor more than five mills on the dollar on the amount of the township assessment for that year;
 2. Whether any portion of said tax shall be paid in labor, and, if so, what portion may be so paid;
 3. Upon the amount that will be allowed for a day's labor done by a man, and by a man and team, on the highway;
 4. At the October meeting, said trustees shall divide their respective townships into such number of highway districts as they may deem necessary for the public good, and, at said meeting, they shall settle with the township clerk and supervisors of highways.

A road district cannot be sued: *White v. Road District, etc.*, 9-202; *Wilson v. Jefferson Co.*, 13-181.

The power of the trustees to divide the township into road districts does not extend to such portions as are embraced within a city. And they have no power to levy a road tax in such portions. The city council have control of the highways and

streets of the city (§ 527): *Marks v. County of Woodbury*, 47-452; *Hawley v. Hoops*, 12-506.

Road tax may be levied upon the property of railway companies, although such property is not placed upon the assessor's book: *S. C. & St. P. R. Co. v. County of Osceola*, 45-168, 177.

SEC. 970. The trustees shall set apart such portion of the tax specified in the preceding section of this chapter, as they deem necessary for the purpose of purchasing the tools and machinery and paying for the guide-boards mentioned in said section, and the same shall constitute a general township fund; and such trustees shall require the township clerk to give bond in such sum as they deem proper, conditioned as the bonds of the county officers, which bond, and the sureties thereon, shall be approved by said trustees. Said clerk shall take charge of and properly preserve and keep in repair such tools, implements, and machinery as may be purchased with said general township fund, and shall have authority to determine at what time the supervisors of the several districts may have the custody and use of the same or any part thereof, and shall be responsible for the safe keeping of the same, when not in the custody of some one of the supervisors for use in working the highways in his district, and shall receive such compensation as the trustees shall provide to be paid out of such fund.

General town-
ship fund:
clerk to give
bond: custody
of implements.
9 G. A. ch. 163,
§ 1.
12 G. A. ch. 100,
§ 6.

The "general fund" is the money set apart for that purpose as here contemplated, and does not embrace money received by the clerk from the county treasurer under § 976: *Henderson v. Simpson*, 45-519.

SEC. 971. The trustees shall order and direct the expenditure of the general township fund.

TOWNSHIP CLERK.

SEC. 972. The township clerk shall furnish each supervisor, to be by him transferred to his successor in office, with a copy of so much of the map or plat furnished such clerk by the auditor as relates to the highways in the district of such supervisor, and, from time to time, mark thereon the changes in or additions to such highways as the same are certified to him by the auditor.

This map is not essential to the authority of the supervisor, and gives him no additional power: *Mosier v. Vincent*, 34-478. It is in no legal sense a process, and is no protection to him in opening a highway indicated thereon: *Campbell v. Kennedy*, 34-494.

Copy of plat book for the township to be furnished by the auditor to the township clerk, see § 938.

SEC. 973. The township clerk shall, within four weeks after the trustees have levied the property tax, make out a tax list for each highway district in his township, which list shall be in tabular form and in alphabetical order, having distinct columns for lands, town lots, and personal property, and carry out in a column the amount of the tax on each piece of land and town lot, and on the amount of personal property belonging to each individual; and he shall carry out the amount of tax, to be paid in money, due from each individual in a column by itself; which list shall contain the names of all persons required to perform two days' labor upon the highway as a poll tax; and to enable the township clerk to make out such tax list, the assessor shall furnish the township clerk of each township, on or before the first day of April of each year, a correct copy of the assessment lists of said township for that year, which list shall be the basis of such tax list. The county auditor shall furnish the several township clerks of his county with printed blanks necessary to carry into effect the provisions of this chapter.

SEC. 974. The township clerk shall make an entry upon such tax list showing what it is, for what highway district, and for what year, and shall attach to the list his warrant under his hand, in general terms, requiring the supervisor of such district to collect the taxes therein charged as herein provided; and no informality in the above requirements shall render any proceedings for the collection of such taxes illegal. The clerk is hereby required to cause such lists to be delivered to the proper supervisors of his township within thirty days after the levy, and take receipts therefor; and such list shall be full and sufficient authority for the supervisor to collect all taxes therein charged against resident property-holders in his district.

SEC. 975. The township clerk shall, on or before the second Monday in October in each year, make out a certified list of all land, town lots, and personal property on which the highway tax has not been paid, and the amount of tax charged on each parcel when taxes have not been paid.

R. 2898.
9 G. A. ch. 96, § 7, 8.
12 G. A. ch. 76.

of land, town lot, or personal property, designating the district in which the same is situated, and transmit the same to the auditor, who shall enter the amount of tax to each piece of land or town lot and person taxed for personal property, in the column ruled for that purpose, the same as other taxes, and deliver the same to the county treasurer, charging him with the same, which shall be collected by such treasurer in the same manner that county taxes are collected; and in case the township clerk shall fail or neglect to make such return, he shall forfeit and pay to the use of the township, for highway purposes, a sum equal to the amount of tax on said land, which may be collected by suit on his official bond before any court having competent jurisdiction.

Irregularities in the making of returns by the township clerk, or in the manner of placing the taxes upon the treasurer's books, will not render the tax invalid: *C. R. & M. R. R. Co. v. Carroll Co.*, 41-153, 177; *Iowa R. Land Co. v. Sac Co.*, 39-124; *Same v. Carroll Co.*, *Id.* 151, 154.

SEC. 976. The county treasurer shall, on the last Monday in March and September in each year, pay to the township clerk all the highway taxes belonging to his township which are at such times in his hands, taking the duplicate receipts of such clerk therefor, one of which shall be delivered by such treasurer, on or before the first Monday in April and October in each year, to the trustees.

These taxes when collected become no part of the county fund and cannot be appropriated or disbursed by the county. If illegally collected, they cannot be refunded to the tax-

payers out of the county revenue, and the county is not liable in an action for their recovery: *Stone v. County of Woodbury*, 51-522.

[Eighteenth General Assembly, Chapter 36.]

SEC. 1. It shall be the duty of the auditor to provide a column which shall show the road districts to which the highway taxes belong, as transmitted by the township clerks, according to section nine hundred and seventy-five of the code of 1873.

SEC. 2. It shall be the duty of the county treasurer, when he pays to the township clerks highway taxes, according to section nine hundred and seventy-six, to furnish, at each time and to each clerk, a statement showing the road district or districts to which it belongs.

SUPERVISOR—POWER, DUTIES.

SEC. 977. The supervisor must reside in the district for which he is elected or appointed, and no person shall be required to serve as supervisor who is exempt from performing labor on the highway.

A supervisor is subject to the same liability for improper or careless exercise of his powers as a city or town is in relation to its streets; and held that he was personally liable for damages to an adjacent land owner resulting from the diversion of a stream of water from his land, by reason of alteration in the highway made by the supervisor: *McCord v. High*, 24-336.

SEC. 978. Each supervisor shall be required to give bond in such sum and with such security as the township clerk may deem requisite, and conditioned that he will faithfully and impartially

Supervisor shall give bond.
R. § 884.

Where reside:
who serve.
R. § 881.

perform all the duties devolving upon him, and appropriate all vacancy moneys that may come into his hands by virtue of his office according to law, and in case of a vacancy occurring in any highway district within a township, the township clerk shall fill such vacancy by appointment.

[As amended, so as to give the power to fill the vacancy to the clerk, instead of to the trustees; 16th G. A., ch. 167.]

SEC. 979. The township clerk shall notify each supervisor within five days after his election or appointment, and if he shall fail to appear before said township clerk, unless prevented by sickness, within ten days, and give bond and take the oath of office, he shall forfeit and pay the sum of five dollars, and in case of his failing or refusing to pay the same, his successor in office shall collect the said amount by suit or otherwise, and apply the same to the repairing of highways in his district.

SEC. 980. The supervisors shall, within ten days after receiving the tax list specified in sections nine hundred and seventy-three and nine hundred and seventy-four, post up in three conspicuous places within his district, written notices of the amount of highway tax assessed to each tax-payer in said district.

SEC. 981. The supervisor shall cause all tax collected by him to be expended for the purposes specified in section nine hundred and sixty-nine of this code, on or before the first day of October of that year, except the portion set apart for a general township fund as provided in said section, which shall be by the supervisor paid over to the township clerk from time to time as collected, and his receipt taken therefor.

SEC. 982. The money tax levied upon the property in each district, except that portion set apart as a general township fund, whether collected by the supervisor or county treasurer, shall be expended for highway purposes in that district, and no part thereof shall be paid out or expended for the benefit of another district.

Road tax collected by the county treasurer and paid over to the clerk, as other road tax, without any special action of the trustees: *Henderson v. Simpson*, 43-519.

SEC. 983. The supervisor shall require all able bodied male residents of his district between the ages of twenty-one and forty-five, to perform two days' labor upon the highway between the first day of April and September of each year.

SEC. 984. The supervisor shall give at least three days' notice of the day or days and place designated to work the highways to all persons subject to work thereon, or who are charged with a highway tax within his district, and all persons so notified must meet said supervisor at such time and place with such tools implements, and teams as the supervisor may designate, and shall labor diligently under the direction of the supervisor for eight hours each day; and for such two days' labor performed, the supervisor shall give to the person a certificate, which certificate shall be evidence that such person has performed labor on the public highway, and shall exempt such person from performing labor in payment of highway poll-tax in that or any other highway district for the same year. And the supervisor shall give any

Notice to: penalty for refusal to serve.
R. § 882.

To post notices.
R. § 894.
9 G. A. ch. 163,
§ 2.
12 G. A. ch. 100,
§ 3.

How tax expended.
9 G. A. ch. 163,
§ 3.
12 G. A. ch. 100,
§ 4.

Of each district
expended
therein.
C. '51, § 578.
9 G. A. ch. 163,
§ 4.
12 G. A. ch. 100,
§ 5.

Who to perform labor
10 G. A. ch. 76,
§ 2.
12 G. A. ch. 100,
§ 9.

Notice of time and place of working: receipts given.
R. § 886, 896.
C. '51, § 588.

person who may perform labor in payment of his highway tax, if demanded, a receipt showing the amount of money earned by such labor, which shall be evidence of the payment of said tax to the amount specified in the receipt.

A failure to notify the taxpayer to work out the portion of his tax which may be paid in work, will not authorize the restraining of the collection of the entire tax: *S. C. & St. P. R Co. v. County of Osceola*, 45-168, 177.

Penalty for failure to attend or work.
R. § 887.

SEC. 985. Each person liable to perform labor on the highway as poll-tax, who shall fail or neglect to attend, either in person or by satisfactory substitute, at the time and place appointed, with the designated tool, implement, or team, having had three days' notice thereof, or having attended, shall spend his time in idleness, or disobey the supervisor, or fail to furnish said supervisor, within five days thereafter, some satisfactory excuse for not attending, shall forfeit and pay to said supervisor the sum of three dollars for each day's delinquency; and in case of failure to pay such forfeit with ten days, the supervisor shall recover the same by action in the name of the supervisor; and no property or wages belonging to said person shall be exempt to the defendant on execution; said judgement to be obtained before any justice of the peace in the proper township, which money, when collected, shall be expended on the public highway.

[A substitute for the original section; 6th G. A., ch. 21.]

Supervisor to perform labor.
R. § 888.
C. 51, § 2547.
9 G. A. ch. 163,
§ 5.
10 G. A. ch. 76,
§ 1.
12 G. A. ch. 100,
§ 7.

SEC. 986. The supervisor shall perform the same amount of labor as is required of an able-bodied man, for which he shall be allowed the sum fixed by the trustees for each day's labor, including the time necessarily spent in notifying the hands and making out his returns, which sum shall be paid out of the highway fund, after deducting his two days' work. When there is no money in the hands of the clerk with which to pay the said supervisor, he shall be entitled to receive a certificate for the amount of labor performed, which certificate shall be received in payment of his own highway tax for any succeeding year.

Supervisor to report: what contain.
R. § 897.
C. 51, § 580.
9 G. A. ch. 163,
§ 2.

SEC. 987. The supervisors of the several districts of each township shall report to the township clerk on the first Monday of April and October of each year, which report shall embrace the following items:

1. The names of all persons in his district required to perform labor on the public highway, and the amount performed by each;
2. The names of all persons against whom suits have been brought, as required by section nine hundred and eighty-five, and the amount collected of each;
3. The names of all persons who have paid their property highway tax in labor, and the amount paid by each;
4. The names of all persons who have paid their property tax in money, and the amount paid by each;
5. A correct list of all non-resident lands and town lots on which the highway tax has been paid, and the amount paid by each;
6. A correct list of all non-resident lands and town lots on which the highway tax has not been paid, and the amount of tax on each piece;

7. The amount of all moneys coming into his hands by virtue of his office, and from what sources;

8. The manner in which moneys coming into his hands by virtue of his office, have been expended, and the amount, if any, in his possession;

9. The number of days he has been faithfully employed in the discharge of his duty;

10. The condition of the highways in his district, and such other items and suggestions as said supervisor may wish to make, which report shall be signed and sworn to by said supervisor and filed by the township clerk in his office.

SEC. 988. If it appears from such report, that any person has failed to perform the two days' labor required, or any part thereof, and that the supervisor has neglected to collect the amount in money required to be paid in case of such failure, the clerk shall add the amount required to be paid in case of such failure to such person's property tax, and certify the same as required in section nine hundred and seventy-five, and the auditor shall enter the same on the proper tax list, and the treasurer shall collect the same as required in said section nine hundred and seventy-five.

SEC. 989. The supervisor is not permitted to cut down or injure any tree growing by the wayside which does not obstruct the highway, and which stands in front of any town lot, enclosure, or cultivated field or any ground reserved for any public use, where such tree is intended to be preserved for shade or ornament, by the proprietor of the land, on or adjacent to which the tree is standing; and it shall not be lawful for the supervisor to enter upon any enclosed or unenclosed lands for the purpose of taking timber therefrom without first receiving permission from the owner or owners of said lands.

[A substitute for the original section which allowed the taking of timber with certain restrictions; 16th G. A., ch. 29, § 1; § 2 of which act repeals all acts and parts of acts inconsistent therewith.]

A road supervisor may be restrained from removing shade trees in a highway, where such removal is not demanded by public convenience:

Bills v. Belknap, 36-583.

SEC. 990. When notified in writing that any bridge or any portion of the public highway is unsafe, the supervisor shall be liable for all damages resulting from the unsafe or impassable condition of the highway or bridge, after allowing a reasonable time for repairing the same. And if there is in his district any bridge erected or maintained by the county, then, in that event, he shall, on such notice of the unsafe condition of such county bridge, as soon as he reasonably can, obstruct passage on such bridge and use strict diligence in notifying at least one member of the board of supervisors of his county in writing of the unsafe condition of such bridge; and if he fails so to obstruct and notify, he shall be liable for all damages growing out of the unsafe condition of such bridge, occurring between the time he is so notified and such time as he neglects in obstructing such passage; and any person who shall remove such obstruction shall be liable for all damages occurring to any person resulting from such removal. *Provided*, *Proviso*, that nothing herein contained shall be construed to relieve the county from liability for the defects of said bridge.

[As amended by 17th G. A., ch. 52.]

Amount due
for labor certi-
fied to auditor.

May not cut
shade trees.
R. § 901.
C. § 51, § 587.

Or take timber
without con-
sent of owner.

Damages
caused by un-
safe bridge or
highway.
R. § 902.
C. § 51, § 582.

County bridge.

Liability of
supervisor.

It is not the duty of the supervisor to build bridges requiring a large expenditure of money, nor is he liable for failure to keep such bridges in repair when such repair would involve a considerable expense. Such matters are under the control of the board of supervisors: *Wilson v. Jefferson Co.*, 13-181; and see § 303, ¶ 18 and notes.

Extraordinary repairs.
R. § 903.
C. 51, § 583,
586.

Penalty.
R. § 904.
C. 51, § 585.

Obstructions moved.
R. § 905.
C. 51, § 594.

Highways to be kept in good condition;
sign boards.
R. § 907.
C. 51, § 577.
9. G. A. ch. 96,
§ 1.

Canada thistles.
14 G. A. ch. 66.

SEC. 991. For making such extraordinary repairs, the supervisor may call out any or all the able-bodied men of the district in which they are to be made, but not more than two days at one time without their consent, and persons so called out shall be entitled to receive a certificate from the supervisor, certifying the number of days' labor performed, which certificate shall be received in payment for highway tax for that or any succeeding year at the rate per day established for that year.

SEC. 992. If any able-bodied man, when duly summoned for any such purpose, fails to appear and labor diligently by himself or substitute, or send satisfactory excuse therefor, or to pay the value of such work in money at any time before suit is brought, he is liable to a fine of ten dollars, to be recovered by suit before any justice of the peace in the name of the supervisor, and for the use of the highway fund of the district.

A man not able-bodied is not liable to the penalty here prescribed. The fact that he does not make known his condition when summoned, or sends a substitute who is rejected as incompetent, will not deprive him of the benefit of his exemption: *Martin v. Gadd*, 31-75.

SEC. 993. The supervisor shall remove obstructions in the highways caused by fences or otherwise, but he must not throw down or remove fences which do not directly obstruct the travel upon the highway, until reasonable notice in writing, not exceeding six months, has been given to the owner of the land enclosed in part by such fence.

This section is applicable in case of obstructions placed in the highway after it is opened, and a fence not directly obstructing travel cannot be thrown down without notice, although the party may be liable to indictment under § 4089: *Mosier v. Vincent*, 34-478.

The notice to be given need not be six months, in all cases, but it must be reasonable: *Blackburn v. Powers*, 40-631.

SEC. 994. The supervisor shall keep the highway in as good condition as the funds at his disposal will permit, and shall place guide-boards at cross-roads and at the forks of the highways in his district; said boards to be made out of good timber, the same to be well painted and lettered, and placed upon good substantial hard wood posts, to be set four feet in and to be at least eight feet above ground.

SEC. 995. The supervisor of highways, when notified in writing that any Canada thistles are growing upon any vacant or non-resident lands or lots within his district, the owner, agent, or lessee of which is unknown, shall cause the same to be destroyed and make return in writing to the board of supervisors of his county, with a bill for his expenses or charges therefor, which

The obstructions contemplated are obstacles, impediments, or hindrances, something which impedes progress. They need not be such as to render the highway impassable: *Patterson v. Vail*, 43-142.

The supervisor may be compelled by mandamus to perform the duty here imposed: *Larkin v. Harris*, 36-93; *Patterson v. Vail*, 43-142.

The obstruction of a highway punishable as a nuisance, see § 4089.

shall be audited and allowed by said board and paid from the county fund; and the amount so paid shall be entered up and levied against the lands or lots on which said thistles have been destroyed, and collected by the county treasurer the same as other taxes and returned to the county fund.

Supervisors or persons owning or occupying land, allowing thistles to blossom or mature, punishable, see § 4062.

SEC. 996. The supervisors are required to meet the township trustees at their meeting on the first Monday in October in each year, at which time there shall be a settlement of the accounts of such supervisors connected with the highway fund, for putting up guide-boards and for any other services; and after payment of the supervisors, the trustees shall order such distribution of the fund in the hands of the township clerk, as they may deem expedient for highway purposes, and the clerk shall pay the same out as ordered by the trustees.

The fund here referred to is the balance of the general fund provided by the trustees under § 970, and does not include moneys coming into the clerk's hands from the county treas-

urer as taxes collected by the latter, except so far as such moneys properly belong to the general fund: *Hender-*

son v. Simpson, 45-519.

Supervisors settle with trustees.
R. § 909.
9 G. A. ch. 96, § 2.

SEC. 997. Should there be no money in the treasury on final settlement of the supervisors with the trustees, said trustees shall order the township clerk to issue orders for the amount due the supervisors. The orders so issued shall be numbered with the number of the district to which they belonged, and shall be received the same as money in the payment of highway tax in the district to which they are issued.

Such orders are payable in money out of the general township fund. If such fund is not sufficient, the trustees may be compelled to levy a tax for their payment. The provision that they are receivable in payment of

highway tax is merely an additional method of payment, and the supervisors cannot be compelled to secure payment in that way: *Tobin v. Township of Emmetsburg*, 52-81.

When no funds, orders to be issued.
Same, § 2.

SEC. 998. Any supervisor failing or neglecting to perform the duties required by this chapter, shall forfeit and pay for the use of the highway fund of his district the sum of ten dollars; the township clerk shall, in case of such failure or neglect, commence suit in his name for the collection of the same, before any justice of the peace within the proper township.

SEC. 999. Where any owner or occupant of land adjoining or abutting upon any highway may desire to plant a hedge upon the line of the same, he shall be allowed to build his fence upon such highway; but he shall not build the fence more than five feet within the outer line of said highway, and said fence may be built on both sides of all highways of fifty feet or more in width at the same time. Such owner or occupant shall not be allowed to occupy such highway as aforesaid for more than ten years, and not more than six months before such hedge shall be planted, and at the expiration of such time he shall remove such fence upon the order of the supervisor of the district where such highway is situated.

Neglect to perform duty; penalty.
R. § 900.
9 G. A. ch. 96, § 1.

Hedges may be planted in highway.
9 G. A. ch. 51.

SEC. 1000. Persons meeting each other on the public highways, shall give one-half of the same by turning to the right. All persons failing to observe the provisions of this section shall be liable to pay all damages resulting therefrom, together with a fine, not exceeding five dollars, which fine shall be appropriated to repairing the highways in the district where the violation occurred; but no prosecution shall be instituted except on complaint of the person wronged.

CHAPTER 3.

OF FERRIES AND BRIDGES.

BRIDGES.

SECTION 1001. Bridges erected or maintained by the public, constitute parts of the highway, and must not be less than sixteen feet in width.

Public: part
highway.
R. § 822.

Bridges are part of the highway: *Brown v. Jefferson Co.*, 16-339; and are therefore under the general supervision of the board of supervisors, under § 920. They cannot be compelled by mandamus to build: *The State v. Morris*, 43-192. As to liability of county for defects in county bridges, &c., see notes to § 303, ¶ 18.

The act of a board of supervisors in contracting for a bridge of less than the statutory width, though erroneous is not void, and such error will not defeat a recovery by the other parties to the contract, in an action thereon: *Mallory v. Montgomery Co.*, 48-681.

SEC. 1002. Any person riding or driving faster than a walk across any bridge maintained at the public charge, shall be subject to pay the following penalties: When the bridge is twenty-five feet in length, and does not exceed one hundred, the sum of one dollar for each offense; when it is over one hundred, and does not exceed two hundred feet in length, the sum of three dollars for each offense; where it is over two hundred, and does not exceed three hundred feet in length, the sum of five dollars for each offense; and the further additional sum of one dollar for each offense for every hundred feet in length in excess of three hundred, to be recovered by civil action in the name and for the county in which the bridge is situated. If the bridge is situated in more than one county the action is maintainable in or by either.

Penalty for fast
driving over.
R. § 823.
G. A. ch. 112,
¶ 1.

TOLL BRIDGES.

How estab-
lished.
R. § 121.
C. 51, § 26.

SEC. 1003. The board of supervisors may grant licenses for the erection of toll bridges across any water courses or other obstruction which justifies the establishment of such bridge, and which calls for an expenditure that cannot be met without serious inconvenience to the revenues of the county. In granting such licenses, preference shall be given to the owner of the land on which the bridge is proposed to be located, if he applies for the privilege, and is, in other respects, a competent person to erect such bridge.

SEC. 1004. When any corporation or individual shall obtain from the board of supervisors, license for the construction of a toll-bridge across any of the streams of this state, such corporation or individual may take and appropriate so much private property as shall be necessary for a right of way therefor and all approaches thereto, in such width as such corporation or individual may desire, not exceeding sixty feet. Supervisors grant license: right of way 12 G. A. ch. 115, § 21, 2.

SEC. 1005. If the owner of the property over which such way extends shall refuse to grant the same, and the damages therefor cannot be settled by agreement, all damages which the owner, or any person having an interest in or improvement upon the property to be taken, will sustain by reason of the appropriation of such property, shall be assessed, and the right of way taken on the application of either party under the provisions of chapter three, of title ten, of this code. Damages assessed. Same, § 3.

SEC. 1006. Where the extremities of the bridge lie in different counties, a license must be procured from each of such counties, and if different rates of toll are fixed by the different boards of supervisors, each has power to fix the rates of travel which is going from its own county. A similar principle shall be observed where only one of the extremities of the bridge is within this state. Where extremities lie in different counties or states. R. § 1216. C. '51, § 728.

SEC. 1007. Such licenses may be granted to continue for any period not exceeding fifty years, and the rate of toll may be fixed, in the first instance, in such a manner as to be unalterable within any stipulated period not exceeding ten years; after that time it shall be under the control of the board of supervisors. Period for which licensee granted. R. § 1217. C. '51, § 729.

SEC. 1008. The board of supervisors is also authorized to stipulate in the license, that no other bridge or ferry shall be permitted across the same obstruction within any distance not exceeding two miles of such bridge, and for a period not exceeding ten years; any violation of the terms of such stipulation is a nuisance, and he who causes it is guilty of a misdemeanor. Other bridges or ferries. R. § 1218. C. '51, § 730.

SEC. 1009. When it is made to appear to the board of supervisors, after ten days notice to the person licensed, that he fails substantially to perform his duties according to law, the board may revoke his license. Failure of duty. R. § 1212. C. '51, § 724.

SEC. 1010. All toll bridges must be so regulated as to allow persons to pass at any hour of the night or day, but the board of supervisors may, in its discretion, in fixing the rates of toll, permit a greater amount to be collected during certain hours of the night time. Day or night: rate of toll. R. § 1222. C. '51, § 731.

FERRIES.

SEC. 1011. The board of supervisors has power to grant such ferry licenses as may be needed within its county, for a period not exceeding ten years. License: supervisors power to grant. R. § 1100. C. '51, § 712.

The rights of a riparian owner, at common law and under the statute, in relation to a ferry franchise, discussed, and held that a stranger has no right to land ferry boats upon the soil of such owner, nor can he use a highway laid out across the land of such owner, without compensation to him. *Prosser v. Wapello Co.*, 18-327; *Prosser v. Davis*, *id.* 367.

A ferry franchise is not lost by the death of the party to whom it is granted, but passes to his personal representatives. *Lippencott v. Allander*, 27-480.

Rates of ferries fixed by boards.
R. § 1201.
C. 51, § 713.

SEC. 1012. The board may prescribe the rates of ferriage, as well as the hours of the day or night during which the ferry must be attended, both of which may, from time to time, be changed at the discretion of the board.

Extent of privilege.
R. § 1202.
C. 51, § 714.

SEC. 1013. In granting a ferry license, the board of supervisors has power to make the privilege granted exclusive, for a distance not exceeding one mile in either direction from said ferry, in which case no person shall keep a public ferry within the prescribed distance, unless, after twenty days' notice to the person who has obtained such privilege, it is made to appear to the board that the public good requires both ferries, and a new license is issued for the second ferry accordingly. The notice herein required must be served personally on the owner, or on the person in charge of the ferry boat.

Grants of exclusive ferry licenses. *Burlington, &c., Ferry Co. v. Davis.* 48-133: *Jones v. Fanning, Mississippi river,* are upheld on grounds of public necessity or advance.

Preference: to whom given.
R. § 1203.
C. 51, § 715.

SEC. 1014. In granting a ferry license, preference must be given to the keeper of a previous ferry at the same point, and if it be a new ferry, preference shall be given to the owner of the land; but if there is no such, or if, after giving the same notice as is required by the last section, he fails to make application for such license, or if, in the opinion of the board, he is an improper person to receive the same, it may be conferred on any other proper applicant.

Opposite shores in different counties.
R. § 1204.
C. 51, § 716.

SEC. 1015. Where the opposite shores of the stream are in different counties, a license from either is sufficient, and the board of supervisors first exercising jurisdiction by granting a license, retains that jurisdiction during the term of such license.

One shore within the state.
R. § 1205.
C. 51, § 717.

SEC. 1016. Where but one side of a river is within this state, the board of supervisors possesses the same power, so far as the shore of this state is concerned, as though the river lay wholly within this state.

In such case the grant of a franchise gives no rights beyond the limits of the state: *Weld v. Chapman,* 2-524; *Burlington, &c., Ferry Co. v. Davis,* 48-133.

License not to issue until bond is filed.
R. § 1207.
C. 51, 719.

SEC. 1017. The board of supervisors, upon being satisfied that the requirements of this chapter have been complied with, and that a ferry is needed at such place, and that the applicant is a suitable person to keep it, must grant the license, which, however, shall not issue until the applicant files a bond, with sureties to be approved by the board or auditor, in a penalty not less than one hundred dollars, with the condition that he will keep the ferry in proper condition for ferrying, and attend the same at all times fixed by the board for running the same, that he will neither demand nor take any illegal tolls, and that he will perform all other duties which are, or may be enjoined on him by law, which bond shall be filed in the county auditor's office.

U. S. express and mail.
R. § 1209.
C. 51, § 721.

SEC. 1018. Every ferryman must transport the public expresses of the United States and of this state, and also the United States mail, at any hour of the day or night.

A public ferryman is a common carrier and charged with the duties of such: *Slimmer v. Merry,* 23-90.

PROVISIONS APPLICABLE TO BOTH FERRIES AND TOLL BRIDGES.

SEC. 1019. All licenses for ferries and toll bridges must be entered upon the records of the board of supervisors, and shall contain the rates of toll allowed. License entered
R. § 1208.
C. 51, § 721.

SEC. 1020. The rates of toll must be conspicuously posted up at each extremity of the bridge, or on the boat, door of the ferry house, or some other conspicuous place near the ferry. Rates of toll:
where posted.
R. §§ 1210, 1220.
C. 51, §§ 722, 732.

SEC. 1021. The failure to have such list posted up as aforesaid, justifies any person in refusing the payment of tolls, and where such failure is habitual, the proprietor of the bridge or ferry is liable to pay twenty-five dollars, and the action therefor may be brought in the name of the county against such proprietor, or on the bond of the proprietor of the ferry; the amount recovered in either case to be paid into the county treasury. Failure to post:
penalty for.
R. §§ 1211, 1220.
C. 51, §§ 723, 732.

SEC. 1022. Before a license can be granted for either a bridge or ferry, notice of the intended application thereto must be posted up in at least three public places on each side of the river, if both are within the state, and in the township and neighborhood in which the proposed bridge or ferry is to be erected or kept, at least twenty days prior to the making of such application. Notice of application to be posted before granting license.
R. §§ 1206, 1219.
C. 51, §§ 718, 731.

SEC. 1023. The taking of illegal toll by the grantees of any of the licenses herein contemplated, subjects the offender to the penalty of twenty-five dollars for every such offense, to be recovered by suit on the bond of such licensee, or against him individually, by the person who paid the illegal toll for his own benefit, or he may bring suit in the name of the county, in which case the proceeds shall go into the county treasury. Penalty for taking illegal toll.
R. § 1236.
C. 51, § 748.

SEC. 1024. A failure in other respects to comply substantially with the terms fixed by the board, works a forfeiture of any of the licenses herein authorized, and also subjects the party guilty of such failure to damages for all the injury resulting therefrom, for which he is liable on his bond. Forfeiture.
R. § 1237.
C. 51, § 749.

SEC. 1025. Any person who refuses to pay the regular tolls established and posted up in accordance with the provisions of this chapter, or who shall run through or pass around the toll gates with a view of avoiding the payment of just tolls or dues, forfeits the sum of five dollars for every offense, which, together with costs of suit, may be recovered by the person entitled to such toll by civil action; but nothing herein contained shall prevent a person from fording a stream across which a toll bridge or ferry has been constructed. Refusal to pay tolls: penalty.
R. § 1238.
C. 51, § 750.

SEC. 1026. The proprietor of any bridge or ferry authorized by this chapter, may establish rules for the regulation of passengers, travelers, teams, and freight passing or traveling thereon, and may enforce those rules by penalties, not exceeding five dollars for any one offense, which penalties may be recovered by civil action in the name of the proprietor aforesaid; but such rules must be published by being conspicuously posted up before they can be thus enforced. Rules established.
R. § 1239.
C. 51, § 751.

SEC. 1027. Any of the franchises contemplated in this chapter are subject to execution, and shall be sold as personal property, and be subject to the same rights and consequences, except that the purchaser may take immediate possession of the property. Franchise sold.
R. § 1240.
C. 51, § 752.

SEC. 1028. The sale of any such franchise carries with it all what goes with the material, implements, rights of way, and works of whatever kind, necessary or ordinarily used in the exercise of such franchise.
 R. § 1241.
 C. 51, § 753.

SEC. 1029. Nothing in this chapter contained shall be so construed as to prevent any person, city, incorporated town, or village, from establishing a free ferry at any point where a license to keep a ferry has been granted under the provisions of this chapter; provided, that where said free ferry is established, said person or company shall pay a reasonable compensation to the persons owning said ferry for all boats, ropes, and other material, if the same be fit for use; and when said free ferry is established at a point at or near where a license has been granted to an individual, such individual shall be exonerated from any further obligation in relation to the ferry. Bond and security shall be given in like manner by the person or company establishing the free ferry as required in this chapter.

SEC. 1030. Nothing in this chapter shall be so construed as to prevent owners of mills from crossing themselves or customers free of charge.
 Mill owners.
 R. § 1246.
 C. 51, § 758.

RAILWAY AND TOLL BRIDGES.

SEC. 1031. Any railway or bridge company that now is, or hereafter may be, incorporated in pursuance of the laws of this state, or of the states of Wisconsin, Illinois, Kansas, Nebraska or Dakota, is authorized to construct a railway bridge across the Mississippi, Missouri or Big Sioux rivers, connecting with the eastern or western terminus, as the case may be, of any railway abutting on the Iowa bank of either of said rivers, at such place as shall be designated therefor by the board of supervisors of the county wherein such abutting is to be made and extending toward a point on the opposite bank that may be selected by such company.
 Supervisors to control location.
 10 G. A. ch. 130, §§ 1, 2, 4.

SEC. 1032. No bridge shall be built under the provisions of the preceding section, until the plan thereof has been submitted to and approved by the board of supervisors of the county in which the bridge is to be partly located.
 Plan to be approved.
 Same, § 3.

SEC. 1033. Any such company may, with the consent of said board of supervisors, construct such bridge with suitable highways and foot ways for teams and foot passengers, and charge such rates of toll therefor as may be approved by said board.
 For teams and passengers:
 toll for.
 Same, § 6.

SEC. 1034. Any such company may establish a ferry across said rivers at or near the termini of its road, for the sole purpose of crossing the freight and passengers of such highway, until the bridge is ready for use.
 Ferry established.
 Same, § 7.

SEC. 1035. No bridge erected under the provisions of this chapter shall be so located or constructed as to unnecessarily impede, injure, or obstruct the navigation of said rivers.
 Navigation.
 Same, § 11.

SEC. 1036. Any such company may issue its bonds or obligations for an amount not exceeding the cost of such bridge, and of its road in the state, and may secure the payment thereof by a mortgage on the same, and may issue certificates of common and preferred stock; the preferred stock to be issued only on condition
 Bonds and stock issued.
 Same, § 5.

that the holders of the common stock give their written consent thereto.

SEC. 1037. Each company acting under the provisions of this chapter shall elect at least one director, who shall be a citizen of and reside in the state of Iowa, and such company shall be liable to be sued in any court of competent jurisdiction in this state, and service of the original notice on said resident director shall be sufficient notice to the company of the pendency of the action.

[Fifteenth General Assembly, Chapter 5.]

SEC. 1. All cities situate on any river in the state, whether organized and existing under special charter or by general law, and from which to the opposite shore of any of said rivers a bridge has been or may be constructed by any railroad or other private company, corporation, or person, shall have power to contract, with the company, corporation, or person owning such bridge, for the use of the same as a public highway, jointly with any company, corporation, or person having or desiring the right to use the same for the passage of cars propelled by steam, or otherwise, and in such contract may have the right to assume sole liability for damage to persons or property by reason of their being on any part of said bridge or on an approach to either end thereof caused by the running of cars or locomotives by any corporation, company, or person entitled to use said bridge, whether such damage results from the negligence of the persons engaged in running said cars or locomotives or otherwise; and to indemnify and save harmless the owners of said bridge, and any or all corporations, companies, or persons entitled to use the same, from all liability for damage so caused; and said city may thereafter manage and control said bridge either as a free or a toll bridge, and prescribe such rates of toll as to it from time to time shall seem proper, and make all necessary police regulations for the government of said bridge.

Cities may contract with owners of bridges for use of same.

May assume liability for damage to persons and property.

May control such bridges.

TITLE VIII.

OF THE MILITIA.

CHAPTER 1.

[This chapter (Secs. 1038 to 1057), after being amended by 16th, G. A., ch. 66, was repealed by 17th G. A., ch. 125, and a substitute enacted, which was in turn repealed by the following act.]

[Eighteenth General Assembly, Chapter 74.]

Who constitute. **Const. Art. 6, §1.** SECTION 1. All able-bodied male citizens of the state, between the ages of eighteen and forty-five years, who are not exempted from military duty according to the laws of the United States, shall constitute the military force of this state; *provided*, that all persons who have served in the United States service and have been honorably discharged therefrom, are exempt from duty under the military laws of the state; but nothing herein contained shall be construed to prohibit any person from becoming a member of any military organization, or holding any office in the militia of this state.

Assessors to return list. **List corrected.** SEC. 2. Assessors in each township are required to make and return to the county auditor of their respective counties, at the time of making the annual assessment, a correct list of persons subject to military duty, which list may be revised and corrected by the board of supervisors, and the county auditor shall, in the month of June in each even numbered year, or at such other time as the governor may direct, certify to the adjutant-general a true copy of said list, and in each odd numbered year he shall certify to the number of names on said list.

Governor to call out. SEC. 3. When a requisition shall be made by the president of the United States for troops, the governor, as commander-in-chief, shall, by his proclamation, order out for active service the militia of the state, or such portion thereof as may be necessary, designating the same by draft, if a sufficient number shall not volunteer, and may organize the same, and commission officers therefor; and when so ordered out for service, the militia shall be subject to like regulations, and receive from the state like compensation and subsistence, as are prescribed by law for the army of the United States.

Same. SEC. 4. The commander-in-chief shall have power, in case of insurrection, invasion or breaches of the peace, or imminent danger thereof, to order into the service of the state such of its military force as he may deem proper, and under the command of such officers as he shall designate.

SEC. 5. In case of any breach of the peace, tumult, riot, or resistance to process of this state, or imminent danger thereof, it shall be lawful for the sheriff of any county to call for aid upon the commandant of any military force within his county, immediately notifying the governor of such action; and it shall be the duty of the commandant upon whom such call is made, to order out in aid of the civil authorities the military force, or any part thereof, under his command.

SEC. 6. The command of any force called into service under sections four and five shall devolve upon the senior officer of such force, unless otherwise specially ordered by the commander-in-chief.

SEC. 7. The military forces of this state, when in the actual service of the state in time of insurrection, invasion, or immediate danger thereof, shall, during their time of service, be paid, by an appropriation especially made therefor, the following sums each for every day actually on duty:

To each general, field and staff officer.....	\$4.00
To every other commissioned officer.....	2.50
To every non-commissioned staff officer.....	2.00
To every other enlisted man.....	1.50

SEC. 8. All officers and soldiers, while on duty or assembled therefor pursuant to the order of any sheriff of any county in cases of riot, tumult, breach of peace, or whenever called upon to aid the civil authorities, shall receive the same compensation as provided for in section seven, and such compensation shall be audited, allowed, and paid by the supervisors of the county where such service is rendered, and shall be a portion of the county charges of said county, to be levied and raised as other county charges are levied and raised.

SEC. 9. The active militia shall be designated "The Iowa National Guard," and shall consist of nine regiments of infantry, and shall be recruited by volunteer enlistments.

SEC. 10. The entire state shall be composed of not more than two brigades, to be commanded by two brigadier-generals. The commander-in-chief shall assign all regiments, battalions and companies to such brigades as he shall think proper. All enlistments therein shall be for five years, and made by signing enlistment papers prescribed by the adjutant-general, and taking the following oath or affirmation, which may be administered by the enlisting officer, to-wit:

"You do solemnly swear (or affirm) that you will bear true allegiance to, and that you will support the constitution of the United States and the state of Iowa, and that you will serve the State of Iowa faithfully in its military service for the term of five years, unless sooner discharged or you cease to become a citizen thereof; that you will obey the order of the commander-in-chief and such officers as may be placed over you, and the laws governing the military forces of Iowa—so help you God."

SEC. 11. The staff of commander-in-chief shall consist of an adjutant-general, an inspector-general, a quartermaster-general, a commissary-general, and surgeon-general, and such other officers as he may think proper to appoint. The adjutant-general shall rank as a major-general. He shall issue and transmit all orders

Sheriff may
call for aid
from militia.

Command.

Compensation.

Same.

Iowa National
Guard.

Brigades.

Enlistments.

Oath.

Staff of com-
mander-in-
chief; duties.

of the commander-in-chief, with reference to the militia or military organizations of the state, and shall keep a record of all officers commissioned by the governor, and of all general and special orders and regulations, and of all such matters as pertain to the organization of the state militia and the duties of an adjutant-general; and, except in times of war or public danger, he shall perform the duties of quartermaster-general, as required by law, without additional compensation therefor. He shall have charge of the state arsenal and grounds, and shall receive and issue all ordinance stores and camp equipage on order of the commander-in-chief. He may appoint, with the approval of the governor, an ordinance sergeant, at a salary of not more than five hundred dollars per year, who shall, under the direction of the adjutant-general, take charge of the state arsenal and grounds, and shall aid and assist him in the discharge of his duties. He shall furnish, at the expense of the state, such blanks and forms as shall be approved by the commander-in-chief. He shall also, on or before the first day of October next preceding the regular session of the general assembly, and at such other times as the governor shall require, make out a full and detailed account of all the transactions of his office, with the expense of the same for the preceding two years, and such other matters as shall be required by the governor. He shall reside at the state capital, and shall hold his office during the pleasure of the governor, and shall receive for his services one thousand five hundred dollars per year.

Generals; election and staff of.

SEC. 12. The generals of brigades shall be elected by the officers and enlisted men of each brigade respectively, and shall hold their office for five years, or until removed by court-martial or resignation. On recommendation of brigade commanders, the governor shall appoint and commission the brigade staff, as follows: Assistant-adjutant-general, with rank of lieutenant-colonel; assistant-inspector-general, with rank of major; surgeon, with rank of major; quartermaster, with rank of captain; commissary, with rank of captain; and two aids-de-camp, with rank of first lieutenant; judge-advocate, with rank of major.

Regiments: officers of.

SEC. 13. A regiment shall consist of not less than eight nor more than ten companies. The colonel and lieutenant colonel and major of all regiments shall be elected as hereinafter provided. The regimental staff shall consist of a surgeon, with rank of major; assistant surgeon, with rank of captain; chaplain, with rank of captain; adjutant, with rank of first lieutenant; quartermaster, with rank of first lieutenant; who shall be appointed and commissioned by the governor, on recommendation of the regimental commander. The colonel of each regiment shall appoint by warrant, countersigned by the adjutant, a sergeant-major, quartermaster-sergeant, commissary-sergeant, hospital-steward, color-sergeant, ordinance-sergeant, drum-major, fife-major, and one bugler, who shall constitute the non-commissioned staff. All field officers shall hold their offices for five years. The commissions of all staff officers shall expire when the officer nominating them or his successor shall make new nominations to their respective offices, and such nominations shall be confirmed by the commander-in-chief.

SEC. 14. The generals of brigades and regimental commanders, ^{Band.} may cause to be organized and enlisted a band, under the leadership of the principal musician of his command, not to exceed sixteen in number, who shall be subject to the orders of such leader, and shall be under the command of such brigade, or regimental commander, and shall be subject to the same regulations as are prescribed for other enlisted men.

SEC. 15. A company shall consist of a captain, a first lieutenant, a second lieutenant, five sergeants, four corporals, two musicians, and not less than forty nor more than sixty-four privates and non-commissioned officers. ^{Company; officers of.} Company officers shall be elected by members of the company, and shall hold their offices for five years. All non-commissioned officers of companies, on recommendation of their captains, shall be appointed by the warrant of the regimental commander, countersigned by the adjutant. All elections of line officers shall be ordered by the regimental commander. All elections of field and general officers shall be ordered by the commander-in-chief. The orders for such election shall be sent to the commanding officer of the company in which said election is ordered, who shall in turn issue his special order for such election, giving at least six days' notice thereof, posting said order in three public places accessible to the members of his command, and where practicable, the same shall be published in one or more newspapers in the county where said company is located. All voting shall be by ballot, and no voting by proxy shall be legal; and a majority of all votes cast shall be necessary to elect. The senior officer present at such election shall preside. The returns of elections, properly attested, shall be made promptly within five days from the date of election, to the commanding officer of the regiment, who shall promptly forward the result of said election to the brigade commander, who shall report the same to the adjutant general of the state, by whose approval the commander-in-chief will issue commissions accordingly: *provided*, that at the organization of a new company the election shall be conducted under such regulations as the adjutant-general shall prescribe.

SEC. 16. Every company and regiment may make by-laws for ^{By-laws.} its own government not in conflict with this act or general orders or regulations, which shall be binding upon the members.

SEC. 17. Every officer and soldier of the Iowa National Guard ^{Term of service.} shall be held to duty for the full term of five years, unless regularly discharged for good and sufficient cause by the commandant of his regiment, approved by the commander-in-chief; *provided*, that said term of five years shall in all cases commence from the time such officer or soldier shall have become an active member of any band, company, regiment, or brigade organized or commissioned under the laws of this state, and now belonging thereto. All persons serving five years consecutively in the national guards shall, on application, be entitled an honorable discharge, exempting them from military duty except in time of war or public danger.

Sec. 18. The organization, equipment, discipline and military regulations of the Iowa National Guard shall strictly conform to the regulations for the government of the army of the United States, in all cases except as herein otherwise provided, ^{Discipline.}

and all orders and regulations governing troops, not in conflict with the constitution of this state and the provisions of this act, shall be binding upon all the members of the Iowa National Guard.

Exemptions of members and property. SEC. 19. Every officer and soldier in the Iowa National Guard shall be exempt from jury duty, from head or poll tax of every description, during the term he shall perform military duty. The uniforms, arms and equipments of every member of the state guard shall be exempted from all suits, distresses, executions or sales for debt or payment of taxes. The Iowa National Guard shall, in cases except treason, felony or breach of the peace, be privileged from arrest during their attendance at drills, parades, encampments, and the election of officers, and in going to and returning from the same.

Drills. SEC. 20. The commandant of each regiment shall order monthly or semi-monthly, day or evening drills, by the companies of his command, and the members thereof shall receive no compensation for their services while attending such drills.

Parades. SEC. 21. The Iowa National Guard may parade for drill not less than three nor more than five days annually, by company, regiment or brigade, as ordered by the commander-in-chief. The quartermaster-general shall provide transportation to and from all such parades or encampments. The commissary-general, under the direction of the commander-in-chief, shall provide the subsistence for all forces so encamped, such subsistence to conform as near as practicable to the ration prescribed by the general regulations of the army of the United States, and to be issued in kind.

Field duty. SEC. 22. The commanding officer of any encampment may cause those under his command to perform any field or camp duty he shall require, and may put under arrest during such encampment or parade any member of his command who shall disobey a superior officer, or be guilty of disorderly or unmilitary conduct, and any other person who shall trespass on the parade or encampment grounds, or in any way interrupt or molest the orderly discharge of duty by the members of his command; and he may prohibit the sale of all spirituous or malt liquors within one mile of such encampment, and enforce such prohibition by force, if necessary; *provided, however,* that nothing herein contained shall be construed to interfere with the regular business of any liquor dealer whose place of business shall be situated within said limits.

Ammunition. SEC. 23. For the use of the Iowa National Guard in target practice, the adjutant-general shall issue to each infantry or cavalry company on the requisition of the commanding officer thereof, an amount not exceeding one thousand rounds of fixed ammunition in each year, and for the use of the artillery he shall issue in each year not exceeding fifty pounds of powder to each company.

Stores. SEC. 24. Upon the organization of any company or regiment of the National Guard, on the requisition of its commanding officer, and the approval of the governor, the adjutant-general shall issue all necessary ordinance and ordnance stores; *provided, however,* that when any arms or munitions are delivered to any commander, he shall execute and deliver to the adjutant-general a bond, payable to the people of the state of Iowa, in sufficient amount, and with sufficient sureties, to be approved by the gov-

ernor, conditioned for the proper use of such arms and munitions, and return of the same, when requested by the proper officers, in good order, wear, use and unavoidable loss and damage excepted. All arms shall be kept at the company or regimental armory.

SEC. 25. Such inspection of the Iowa National Guard shall be Inspection. made as the commander-in-chief may from time to time direct.

SEC. 26. Any officer or soldier of the Iowa National Guard ^{Embezzlement of state property.} knowingly making any false certificate, or false return of state property in his hands, or wilfully neglecting or refusing to apply all money drawn from the state treasury for the purpose named in the requisition therefor, shall be guilty of embezzlement and fraud, and shall be punished in the manner as provided for like offenses in the criminal code of this state.

SEC. 27. The several regiments of the Iowa National Guard ^{Uniforms.} shall adopt the present dress uniform of the army of the United States.

SEC. 28. The field, staff and line officers of the Iowa National ^{Same.} Guard shall provide themselves with the uniform prescribed for officers of the same rank in the United States army within ninety days from the date of commission.

SEC. 29. Every officer or soldier who shall wilfully neglect to return to the armory of the company, or place in charge of the commanding officer of the company to which he belongs, any arms, uniform or equipment, or portion thereof, belonging to the state, within six days after being notified by said commanding officer to make such return, or to place the same in his charge, shall be fined not more than fifty dollars or imprisoned not more than thirty days.

SEC. 30. Every person who shall wilfully or wantonly injure or destroy any uniform, arm, equipment, or other military property of the state, and refuse to make good such injury or loss, or who shall sell, dispose of, secrete, or remove the same, with intent to sell or dispose thereof, shall be fined not more than two hundred dollars, or imprisoned not more than six months, or both.

SEC. 31. Every soldier absent without leave or sufficient excuse from any parade, drill or encampment, shall be fined two dollars for each day of absence; and for any unsoldierly conduct at drill, parade or encampment he may be fined not more than ten dollars, such fines to be collected by civil suit; and suits for the collection of fines shall be brought in the name of the state of Iowa, for the use of the company to which the soldier fined belongs; but in no case shall the state pay any costs of such suits. Nothing herein shall be construed to prevent any company or band imposing such fines upon its members as it may think proper in its by-laws, which fines may be enforced in the same manner as hereinbefore provided for the collection of fines for absence from drill, parade or encampment.

SEC. 32. A judge-advocate, with the rank of major, shall be appointed for each brigade, and hold office during the pleasure of the commander-in-chief, who shall perform the duties of such office in the court-martial held in his district; and no other person shall prosecute or defend in such courts; but, when he shall be unable to attend, from any cause, or shall be disqualified by interest or relationship, the commander-in-chief may designate the judge-advocate of another brigade to act in his place.

Court-martial. SEC. 33. Commissioned officers, for neglect of duty, disobedience of orders or unsoldierly or ungentlemanly conduct, **may** be tried by court-martial, provided that no sentence of any court-martial shall affect the life, liberty or property of any citizen of Iowa, according to the regulations provided in like cases in the army of the United States. The commander-in-chief, by order, shall designate the time and place of holding such courts, and the names of officers composing it, consisting of not less than three nor more than six. The senior officer named shall preside, and shall be of superior rank to the officer on trial, when practicable. Witnesses for the prosecution and defense may be summoned to attend by subpoena signed by the judge-advocate. Any witness, duly summoned, who shall fail to appear and testify may be, by warrant of the president of the court, directed to the sheriff or any constable, arrested and treated as in like cases before civil courts. The fees of all witnesses shall be the same as allowed in civil cases, to be taxed with the necessary expenses of the judge-advocate and the court, by the president of the court, and paid by the state treasurer, on the auditor's warrant, to the judge-advocate, who shall pay all expenses of the trial, when received by him.

Sentence. SEC. 34. The sentences of courts-martial shall be approved or disapproved by the commander-in-chief, who may mitigate or remit any punishment awarded by sentence of court-martial, when such sentence shall have been approved by the brigade commander. The record of all the proceedings and the sentence of a court-martial in every case, with the order approving or disapproving it, shall be deposited in the office of the adjutant-general.

Military board. SEC. 35. Every brigade and regimental commander in the Iowa National Guard is hereby authorized to appoint a military board or commission, of not less than three nor more than five officers, whose duty it shall be to examine the capacity, qualifications, propriety of conduct and efficiency of any commissioned officer in his command, who may be reported to the board of commission; and upon the report of said board, if adverse to such officer, and if approved by the commander-in-chief, the commission of said officer shall be vacated; *provided, always,* that no officer shall be eligible to sit on such board whose rank or promotion would in any way be affected by the proceedings; and two members, at least, shall be of equal or superior rank with the officer examined; and if any officer shall refuse to report himself, when directed, before such board, the commander-in-chief may, upon the report of such refusal by his commander, declare his commission vacated.

Military organizations. SEC. 36. It shall not be lawful for any body of men whatever, other than the regularly organized volunteer militia of this state, and the troops of the United States, to associate themselves together as a military company or organization, or to drill on parade within the limits of this state without the license of the governor thereof, which license may at any time be revoked; *provided,* that nothing herein contained shall be so construed as to prevent social or benevolent organizations from wearing swords.

Soldiers to provide uniforms. SEC. 37. Every soldier of the Iowa National Guard shall provide and keep himself provided with a uniform, according to the rules and regulations prescribed by law, and subject to such re-

strictions, limitations and alterations as the commander-in-chief may direct.

SEC. 38. In lieu of uniforms being furnished in kind by the state, there shall annually be paid to each soldier having complied with section 37, the sum of four dollars, to be paid under such provisions as the commander-in-chief may direct, unless a majority of the members of the company prefer to own their uniforms, in which case there shall be no payment to the members of said company, as herein contemplated, but the said uniforms shall be the property of the members of said company respectively furnishing the same; but in no event shall the state be liable for the payment of any money in lieu of uniforms, or for any purpose contemplated by this act, unless such payment can be made without exceeding the annual appropriation provided for by this act.

SEC. 39. In all other cases except those provided for in the preceding section, all uniforms and other military property shall belong to the state and be used for military purposes only, and each soldier, upon receiving a discharge or otherwise leaving the military service of the state, or upon demand of his commanding officer, shall forthwith surrender the said uniform, together with all other articles of military property that may be in his possession, to said commanding officer.

SEC. 40. There shall be allowed annually for postage, stationery and office incidentals to each brigade headquarters, the sum of twenty-five dollars, to each regimental headquarters, the sum of twenty-five dollars, and each company headquarters the sum of ten dollars.

SEC. 41. There shall be allowed annually to each company for armory rent, fuel, lights, and like necessary expenses, the sum of fifty dollars.

SEC. 42. Such clerical assistance shall be employed in the adjutant-general's office, as shall in the opinion of the governor, be actually necessary, and any person so employed, shall receive, for the time they may be actually necessarily on duty, such compensation as the governor may prescribe.

SEC. 43. The commander-in-chief is authorized to make and publish regulations for the government of the Iowa National Guard, in accordance with existing laws.

SEC. 44. Any soldier guilty of a military offense may be put under guard by the commander of a company, regiment or brigade, for a time not extending beyond the term of service for which he is then ordered.

SEC. 45. The commander-in-chief shall disband any company of the Iowa National Guard when it shall fall below a proper standard of efficiency, and he may order special inspections with a view to disbandment. All companies not acceptably uniformed within four months after the passage of this act shall be considered below the proper standard of efficiency within the meaning of this section, and shall be disbanded. When any company shall be disbanded under the provisions of this section, its place in its regiment shall not be supplied by the acceptance of another company, nor shall any new company be accepted into the National Guard until the first day of May, 1882, nor until authority for this purpose shall be given by the general assembly.

- Words construed. SEC. 46. In this chapter the word "soldiers" shall include musicians, and all persons in the volunteer or enrolled militia, except commissioned officers, and the word "company" shall include battery.
- Medical staff. SEC. 47. The medical staff of the Iowa National Guard shall have charge of that branch of the service under the supervision of the surgeon-general.
- Surgeon. SEC. 48. A surgeon in charge in the field or at a camp of instruction may draw, on requisition, such medical stores and supplies as in his judgment may be needed, and for which he shall account, on forms provided by the quartermaster-general.
- Surgeon-general. SEC. 49. The surgeon-general may prescribe the necessary forms and blanks for the work of his department; and all subordinate surgeons of the Iowa National Guard will obey his orders, and report, as often as he may prescribe, the transactions of their department.
- Term of enlistment. SEC. 50. Nothing in this act shall be construed to extend the time of any officer beyond the time for which he was elected, or that of any soldier beyond the time for which he was enlisted.
- Appropriation. SEC. 51. There is hereby appropriated the sum of twenty thousand dollars per annum, or so much thereof as may be necessary, out of the state treasury, not otherwise appropriated, for the purposes named in this act. And all warrants against said appropriation necessary to carry out the provisions of this act shall be drawn by the auditor of state upon the state treasurer, upon the certificate of the adjutant-general, approved by the governor. And no indebtedness shall be created under the provisions of this act not covered by the appropriation herein made.
- Repealing clause. SEC. 52. Chapter 125, acts of the seventeenth general assembly, and all other acts or portions of acts in conflict herewith, are hereby repealed.

TITLE IX.

OF CORPORATIONS.

CHAPTER 1.

OF CORPORATIONS FOR PECUNIARY PROFIT.

SECTION 1058. Any number of persons may associate themselves and become incorporated for the transaction of any lawful business, including the establishment of ferries, the construction of canals, railways, bridges, or other works of internal improvement; but such incorporation confers no power or privilege not possessed by natural persons, except as hereinafter provided.

SEC. 1059. Among the powers of such body corporate are the following:

1. To have perpetual succession;
2. To sue and be sued by its corporate name;
3. To have a common seal, which it may alter at pleasure;
4. To render the interests of the stockholders transferable;
5. To exempt the private property of its members from liability for corporate debts, except as herein otherwise declared;
6. To make contracts, acquire and transfer property, possessing the same powers in such respects as private individuals now enjoy;
7. To establish by-laws, and make all rules and regulations deemed expedient for the management of their affairs in accordance with law.

For the purpose of effecting the objects of the corporation, its powers are as broad and comprehensive as those of an individual, unless the exercise of the asserted power is expressly prohibited: *Thompson v. Lambert*, 44-239, 244.

The corporation must sue and be sued in the corporate name adopted in the articles of incorporation: *C. D. & M. R. Co. v. Keisel*, 43-39.

The corporation may exempt the private property of its members from liability for corporate debts: *Spense v. I. V. Const. Co.*, 36-407; *Larson v. Dayton*, 52-597.

The only case in which the private property of members becomes liable for corporate debts is that specified in § 1068: *First Nat'l Bank, &c., v. Davies*, 43-424, 436.

SEC. 1060. Previous to commencing any business, except that of their own organization, they must adopt articles of incorporation, which must be signed and acknowledged by the incorporators, and recorded in the office of the recorder of deeds of the county where the principal place of business is to be, in a book kept therefor; the recorder must record such articles as aforesaid, within five days after the same are filed in his office, and certify

Articles to be adopted and recorded.

R. § 1152.
C. '51, § 675.

13 G.A. ch. 172,
§ 222.

thereon the time when the same was filed in his office, and the book and page where the record thereof will be found. The said articles and certificate of recorder shall be then recorded in the office of secretary of state, in a book kept for that purpose.

[The original repealed, and this section substituted; 17th G. A., ch. 23.]

A failure to file the articles of incorporation in the office of the secretary of state, does not, under § 1063, render the stockholders individually liable (the section being discussed) | in the opinions of a divided court: *First Nat'l Bank v. Davies*, 43-424; followed in *Eisfeld v. Kenworthy*, 30-389.

Highest amount of indebtedness fixed.
R. § 1153.
C. 51, § 676.

SEC. 1061. Such articles of incorporation must fix the highest amount of indebtedness or liability to which the corporation is at any one time to be subject, which must in no case, except in that of risks of insurance companies, exceed two-thirds of the capital stock.

The incurring of liabilities greater than here provided does not render the stockholders individually liable: *Langan v. I. & M. Const. Co.*, 49-317.

A private corporation is liable, at least to the extent of the considera-

tion received, for indebtedness contracted in excess of the limit imposed by the articles of incorporation. In such case the corporation is estopped from setting up the limit: *Humphrey v. Patrons', etc., Ass'n*, 50-607.

For what time.
R. § 1154.
C. 51, 677.

What it must contain.
R. § 1155.
C. 51, § 678.

SEC. 1062. A notice must also be published, for four weeks in succession, in some newspaper as convenient as practicable to the principal place of business.

SEC. 1063. Such notice must contain:

1. The name of the corporation and its principal place of transacting business;
2. The general nature of the business to be transacted;
3. The amount of capital stock authorized, and the times and conditions on which it is to be paid in;
4. The time of the commencement and termination of the corporation;
5. By what officers or persons the affairs of the corporation are to be conducted, and the times at which they will be elected;
6. The highest amount of indebtedness to which the corporation is at any time to subject itself;
7. Whether private property is to be exempt from corporate debts.

When it may begin business.
R. § 1156.
C. 51, § 679.
13 G. A. ch. 772.
§ 4.

SEC. 1064. The corporation may commence business as soon as the articles of incorporation are filed in the office of the recorder of deeds, and their doings shall be valid if the publication in a newspaper is made, and articles recorded in the office of the secretary of state within three months from such filing in the recorder's office.

[The original section repealed and the foregoing substituted; 17th G. A., ch. 23.]

Failure to file articles in office of secretary of state within three months does not render the acts of the corporation void, nor deprive it of its franchises without proceedings being instituted for that purpose: *First Nat'l Bank v. Davies*, 43-424.

SEC. 1065. No change in any of the above matters shall be valid, unless recorded and published as the original articles required to be.

A change in the articles, made in the manner therein provided, and properly recorded and published, is as binding upon stockholders who do not, as upon those who do consent thereto: *B. & M. R. R. Co. v. White*, 5-4-9.

Where the corporation has as-

sumed to make a contract authorized by its amended articles, and has received the consideration therefor, it cannot escape liability upon the ground that such amended articles had not been recorded: *Humphrey v. Patrons*, etc., Ass'n, 50-607.

SEC. 1066. No corporation can be dissolved prior to the period fixed in the articles of incorporation, except by unanimous consent, unless a different rule has been adopted in their articles.

SEC. 1067. The same period of newspaper publication must precede any such premature dissolution of a corporation as is required at its creation.

SEC. 1068. A failure to comply substantially with the foregoing requisitions in relation to organization and publicity, renders the individual property of the stockholders liable for the corporate debts. But this section shall not be deemed applicable to railway corporations and corporators, and stockholders in railway companies shall be liable only for the amount of stock held by them in said companies.

In the clause "in relation to organization and publicity," the word "and" should be construed as "or." A failure in either respect will render the stockholders individually liable; so held, in case of a failure to publish any notice whatever. The burden of proving such failure rests upon the party seeking to hold the stockholders individually liable: *Eisfeld v. Kenworthy*, 50-389.

A failure to comply with the provisions of §§ 1076, 1077, will not render the stockholders individually liable: *Langan v. I. & M. Const. Co.*, 49-317; and so held, also, under Rev. in which those sections (Rev. §§ 1161, 1162), preceded this one: *McKellar*

v. Stout, 14-359.

Failure to file articles in office of secretary of state, as provided in § 1069, does not render stockholders individually liable: *First Nat. Bank, &c., v. Davis*, 43-424.

The liability of stockholders in railway companies is only for unpaid stock held by them, as provided in § 1082. (*Arguendo*): *Ibid.*

A construction company having power under its articles to construct and operate a railway is a railway corporation within the meaning of this section: *Langan v. I. & M. Const. Co.*, 49-317; and *arguendo* in *First Nat'l Bank, &c., v. Davies*, supra.

DURATION.

SEC. 1069. Corporations for the construction of any work of internal improvement, or for the business of life insurance, may be formed to endure fifty years; those formed for other purposes cannot exceed twenty years in duration; but in either case they may be renewed, from time to time, for periods not greater respectively than was at first permissible, if three-fourths of the votes cast at any regular election for that purpose be in favor of such renewal, and if those wishing a renewal will purchase the stock of those opposed to the renewal at its fair current value.

SEC. 1070. Corporations for agricultural or horticultural purposes, and cemetery associations, may be formed to endure any length of time that may be provided in the articles of incorpora-

How renewed.
R. § 11-8.
C. '51, § 681.
12 G. A. ch. 173.
§ 26.

For agricultu-
ral, horticul-
tural, and ceme-
tery purposes.
R. § 1185.

tion; but the general assembly may, at any session, fix a time when all such corporations shall be dissolved. Such corporations shall not own to exceed nine sections of land, and the improvements and necessary personal property for the proper management thereof; and the articles of incorporation shall provide a mode by which any member may, at any time, withdraw therefrom, and also the mode of determining the amount to be received by such member upon withdrawal and for the payment thereof to such member, subject only to the rights of the creditors of such corporation.

[For general provisions as to cemeteries, see acts inserted following § 420.]

FRAUD—CONSEQUENCES OF.

Penalty for.
R. § 1163.
C. 51, § 686.

SEC. 1071. Intentional fraud in failing to comply substantially with the articles of incorporation, or in deceiving the public or individuals in relation to their means or their liabilities, shall subject those guilty thereof to fine and imprisonment, or both, at the discretion of the court. Any person who has sustained injury from such fraud, may also recover damages therefor against those guilty of participating in such fraud.

In an action for damages under this section, the particular respect in which there was a failure to comply with the articles, &c., resulting in

damage to plaintiff, or the particular act of deception, &c., must be specified: *White v. Hosford*, 37-566.

Diversion of
funds deemed
a fraud.
R. § 1164.
C. 51, § 687.

SEC. 1072. The diversion of the funds of the corporation to other objects than those mentioned in their articles and in the notices published as aforesaid, if any person be thereby injured, and the payment of dividends which leave insufficient funds to meet the liabilities of the corporation, shall be deemed such frauds as will subject those therein concerned to the penalties of the preceding section, and such dividends, or their equivalent, in the hands of individual stock-holders shall be subject to said liabilities.

Insurance
companies.
R. § 1165.
C. 51, § 688.

SEC. 1073. Dividends by insurance companies, made in good faith before their knowledge of the happening of actual losses, are not intended to be prevented or punished by the provisions of the preceding section.

Forfeiture of.
R. § 1167.
C. 51, § 690.

SEC. 1074. Either such failure, or the practice of fraud in the manner hereinbefore mentioned, shall cause a forfeiture of all the privileges hereby conferred, and the courts may proceed to wind up the business of the corporation by an information in the manner prescribed by law.

Penalty for
keeping false
books.
R. § 1168.
C. 51, § 691.

SEC. 1075. The intentional keeping of false books or accounts by any corporation, whereby any one is injured, is a misdemeanor on the part of those concerned therein, and any person shall be presumed to be concerned therein whose duty it was to see that the books and accounts were correctly kept.

BY-LAWS, INDEBTEDNESS, TRANSFER OF SHARES, NON-USER.

By-laws posted.
R. § 1161.
C. 51, § 684.

SEC. 1076. A copy of the by-laws of the corporation, with the name of all its officers appended thereto, must be posted in the

principal places of business, and be subject to public inspection. Amount of capital stock and indebtedness posted up.

SEC. 1077. A statement of the amount of capital stock subscribed, the amount of capital actually paid in, and the amount of the indebtedness in a general way, must also be kept posted up R. § 1162.
in a like manner; which statement must be corrected as often as C. '51, § 685.
any material change takes place in relation to any part of the subject matter of such statement.

A failure to comply with this, or render the private property of stock-holders liable. See notes to § 1063.

SEC. 1078. The transfer of shares is not valid, except as between the parties thereto, until it is regularly entered on the books of the company, so as to show the name of the person by, and to whom transferred, the numbers or other designation of the shares and the date of the transfer; but such transfer shall not in any way exempt the person making it from any liability of said corporation created prior thereto. The books of the company must be so kept as to show intelligibly the original stockholders, their respective interests, the amount paid on their shares, and all transfers thereof; and such books, or a correct copy thereof, so far as the items mentioned in this section are concerned, shall be subject to the inspection of any person desiring the same.

The provision as to the transfer of shares is intended as a protection to the company and only applies where the sale or transfer in some way conflicts with the interests of the corporation: *Moor v. Walker*, 46-164.

A provision of the by-laws of a corporation that no transfer of stock shall be valid unless approved by the board of directors, may be enforced to protect the rights of the corporation, but cannot be used to defeat the rights of others and operate as a restraint upon the disposition of the

stock. The transferee may hold the stock and enforce a transfer thereof in proper form in the absence of any right or lien of the company to or upon such stock: *Farmers', &c., Bunk v. Wason*, 48-336.

A failure to properly keep the books as here provided, does not render the stockholders individually liable. If the books are fraudulently kept those guilty of participation in the fraud may be held liable under § 1071: *Langan v. I. & M. Const. Co.*, 49-317.

SEC. 1079. Any corporation organized in accordance with the provisions of this chapter, shall cease to exist by the non-user of its franchises for two years at any one time, but such body shall not forfeit its franchises by reason of its omission to elect officers, or to hold meetings at any time prescribed by the articles of incorporation or by-laws, provided such act be done within two years of the time appointed therefor.

SEC. 1080. Corporations whose charters expire by their own limitation, or the voluntary act of the stockholders, may, nevertheless, continue to act for the purpose of winding up their concerns.

A corporation will be kept alive by statute for the purpose of discharging its contracts and disposing of its property: *Muscatine Western R. Co. v. Horton*, 38-33, 45.

The voluntary dissolution of a corporation does not take away its

power to act for the purpose of winding up its affairs, nor affect the right of a creditor, in equity at least, to be released from the inequitable consequences of such dissolution: *Muscatine Turnverein v. Funk*, 18-469.

SEC. 1081. For the purpose of repairs, rebuilding, or enlarging, or to meet contingencies, or for the purpose of a sinking fund, the corporation may establish a fund which they may loan, and in relation to which they may take the proper securities.

R. § 1162.
C. '51, § 685.

Transfer of shares: when valid.
R. § 1169.
C. '51, § 692.

Forfeiture of franchise by non-user.
R. § 1170.
C. '51, § 693.

Expiration of R. § 1171.
C. '51, § 694.

Sinking fund R. § 1176.
C. '51, 699.

PRIVATE PROPERTY LIABLE FOR CORPORATE DEBTS.

SEC. 1082. Neither anything in this chapter contained, nor Individual liability. any provisions in the articles of incorporation, shall exempt the stockholders from individual liability to the amount of the unpaid R. § 1172. installments on the stock owned by them, or transferred by them C. '51, § 695. 13G. A. ch. 172, § 6. for the purpose of defrauding creditors, and execution against the company may, to that extent, be levied upon the private property of any such individual.

An execution against the company can only be levied on the private property of a stockholder after a judgment has been obtained against him as provided in § 1084: *Bayliss v. Swift*, 40-648; and see *Hampson, v. Weare*, 4-13; *Bailey v. D. W. R. Co.*, 13-97.

The corporation cannot, by taking from the stockholder land at a price many times its value and issuing him therefor certificates of paid-up stock, defeat the claim of creditors against such stockholder: *Osgood v. King*, 42-478.

SEC. 1083. In none of the cases contemplated in this chapter, can the private property of the stockholders be levied upon for the payment of corporate debts, while corporate property can be found with which to satisfy the same; but it will be sufficient proof that no property can be found, if an execution has issued on a judgment against the corporation, and a demand has been thereon made of some one of the last acting officers of the body for property on which to levy, and if he neglects to point out any such property.

SEC. 1084. Before any stockholder can be charged with the payment of a judgment rendered for a corporate debt, an action shall be brought against him, in any stage of which he may point out corporate property subject to levy; and upon his satisfying the court of the existence of such property; by affidavit or otherwise, the cause may be continued, or execution against him stayed, until the property can be levied upon and sold, and the court may subsequently render judgment for any balance which there may be after disposing of the corporate property; but, if a demand of property has been made as contemplated in the preceding section, the costs of said action shall in any event, be paid by the company or the defendant therein, but he shall not be permitted to controvert the validity of the judgment rendered against the corporation, unless it was rendered through fraud and collusion.

The action against the stockholder, here contemplated, is an ordinary action, followed by an ordinary judgment; after which, an execution against the corporation may, to the extent of such judgment, be levied upon the private property of the stockholder, as provided in § 1082: *Bayliss v. Swift*, 40-648.

A prior statute upon the same subject considered: *Donworth v. Coolbaugh*, 5-300.

SEC. 1085. When the private property of a stockholder is taken for a corporate debt, he may maintain an action against the corporation for indemnity, and against any of the other stockholders for contribution.

SEC. 1086. The franchise of a corporation may be levied upon under execution and sold, but the corporation shall not become thereby dissolved, and no dissolution of the original corporation shall affect the franchise, and the purchaser becomes vested with all the powers of the corporation therefor. Such franchise shall be sold without appraisement.

Stockholder may sue corporation.
R. § 1173.
C. '51, § 698.

Franchise sold on execution.
R. § 1177.
C. '51, § 700.

SEC. 1087. In any proceedings by or against a corporation, or Books, produced.
against a stockholder, to charge his private property or the dividends received by him, the court is invested with power to compel the officers to produce the books of the corporation, on the motion of either party, upon a proper cause being shown for that purpose.

SEC. 1088. A single individual may entitle himself to all the advantages of this chapter, provided he complies substantially with all its requirements, omitting those which from the nature of the case are inapplicable.

SEC. 1089. No body of men acting as a corporation under the provisions of this chapter, shall be permitted to set up the want of a legal organization as a defense to an action against them as a corporation; nor shall any person sued on a contract made with such a corporation, or sued for an injury to its property, or a wrong done to its interest, be permitted to set up a want of such legal organization in his defense.

A party contracting with a corporation cannot deny its corporate existence: *Hove Machine Co. v. Snow*, 32-433; *Courtright v. Deeds*, 37-503, 511.

A person sued upon such contract cannot set up want of legal organization, &c.: *Washington College v. Duke*, 14-14.

SEC. 1090. The articles of incorporation, by-laws, rules, and regulations of corporations hereafter organized under the provisions of this title, or whose organization may be adopted or amended hereunder, shall, at all times, be subject to legislative control, and may be, at any time, altered, abridged or set aside by law, and every franchise obtained, used, or enjoyed by such corporation, may be regulated, withheld, or be subject to conditions imposed upon the enjoyment thereof, whenever the general assembly shall deem necessary for the public good.

DOUBLE LIABILITY OF STOCKHOLDERS IN BANKS.

[Eighteenth General Assembly, Chapter 208.]

SEC. 1. Chapter one of title nine of the code of 1873, is hereby amended by adding thereto as follows: That all stockholders or shareholders in associations or corporations organized under said chapter one aforesaid, for the purpose of transacting a banking business, buying or selling exchange, receiving deposits of money, or discounting notes, shall be individually and severally liable to the creditors of such association or corporation of which they are stockholders or shareholders, over and above the amount of stock by them held therein, to an amount equal to their respective shares so held for all its liabilities accruing while they remained such stockholders; and should any such association or corporation become insolvent, and its assets be found insufficient to pay its debts and liabilities, its stockholders may be compelled to pay such deficiency in proportion to the amount of stock owned by each, not to exceed the extent of the additional liability hereby created.

Stockholders
or sharehold-
ers in banks
or banking as-
sociations, &c.

The amount for which the stockholders are thus liable, to be distributed proportionally to the creditors.

Liability here created is over and above the stock owned.

SEC. 2. Should the whole amount for which the stockholders are made individually responsible as provided by section one of this act be found in any case to be inadequate to the payment of all the debts of any such association or corporation, after the application of its assets to the payment of such debts, then the amount due from such stockholders on account of their individual liability created by this act, as such, shall be distributed equally among all the creditors of such corporation in proportion to the amount due to each.

SEC. 3. The personal liability in this chapter provided is over and above the stock owned by the stockholders in such corporations and any amount paid thereon.

CHAPTER 2.

CORPORATIONS OTHER THAN THOSE FOR PECUNIARY PROFIT.

SECTION 1091. Associations for the establishment of seminaries of learning, churches, lyceums, libraries, lodges of odd fellows, or masons, and other institutions of a benevolent or charitable character; agricultural societies, subordinate granges of the patrons of husbandry, and associations for the detection of horse-thieves, and of other depredators upon property, may become incorporated in the manner directed in the preceding chapter, so far as applicable, and shall thereby become vested with all the powers and privileges, and subject to all the liabilities provided by that chapter, except as herein modified.

For the purpose of effecting the objects of such corporation, it has power to borrow money by executing notes and mortgages: *Thompson v. Lambert*, 44-239.

ARTICLES RECORDED. SEC. 1092. Their articles of incorporation shall be recorded by the recorder of deeds of the county where the principal place of business is kept only; but a newspaper publication is not requisite.

DIVIDEND. SEC. 1093. No dividend, nor distribution of property among the stockholders, shall be made until the dissolution of the corporation.

Degrees conferred. SEC. 1094. Corporations of an academical character are invested with authority to confer the degrees usually conferred by such institutions.

CHARITABLE, SCIENTIFIC, AND RELIGIOUS ASSOCIATIONS.

HOW FORMED. SEC. 1095. Any three or more persons of full age, citizens of the United States, a majority of whom shall be citizens of this state, who desire to associate themselves for benevolent, charitable, scientific, religious, or missionary purposes, may make, sign, and acknowledge before any officer authorized to take the acknowledgments of deeds in this state, and have recorded in the

office of the recorder of the county in which the business of such society is to be conducted, a certificate in writing, in which shall be stated the name or title by which such society shall be known, the particular business and objects of such society, the number of trustees, directors, or managers to conduct the same, and the name of the trustees, directors, or managers of such society for the first year of its existence.

SEC. 1096. Upon filing for record the certificate as aforesaid, the persons who shall have signed and acknowledged such certificate, and their associates and successors, shall, by virtue hereof, be a body politic and corporate by the name stated in such certificate, and, by that, they and their successors shall and may have succession, and shall be persons capable of suing and being sued, and may have and use a common seal, which they may alter or change at pleasure; and they and their successors, by their corporate name shall be capable of taking, receiving, purchasing, and holding real and personal estate; and of making by-laws for the management of its affairs, not inconsistent with law.

SEC. 1097. The society so incorporated, may, annually, or oftener, elect from its members its trustees, directors, or managers at such time and place, and in such manner as may be specified in its by-laws, who shall have the control and management of the affairs and funds of the society a majority of whom shall be a quorum for the transaction of business; and whenever any vacancy shall happen among such trustees, directors, or managers, by death, resignation, or neglect to serve, such vacancy shall be filled in such manner as shall be provided by the by-laws of such society. When the body corporate consists of the trustees, directors, or managers of any benevolent, charitable, literary, scientific, religious, or missionary institution, which is or may be established in this state, and which is or may be under the patronage, control, direction, or supervision of any synod, conference, association, or other ecclesiastical body in such state, established agreeably to the laws thereof, such ecclesiastical body may nominate and appoint such trustees, directors, or managers according to usages of the appointing body, and may fill any vacancy which may occur among such trustees, directors, or managers; and when any such institution may be under the patronage, control, direction, or supervision of two or more of such synods, conferences, associations, or other ecclesiastical bodies, such bodies may severally nominate and appoint such proportion of such trustees, directors or managers as shall be agreed upon by those bodies immediately concerned. And any vacancy occurring among such appointees last named, shall be filled by the synod, conference, association, or body having appointed the last incumbent.

SEC. 1098. Any corporation in this state of an academical character, the memberships of which shall consist of lay members and pastors of churches, delegates to any synod, conference, or council, holding its annual meetings alternately in this and one or more adjoining states, may hold its annual meetings for the election of officers and the transaction of business in any adjoining state to this, at such place therein as the said synod, conference, or council shall hold its annual meeting; and the elections so

Certificate re-
corded: pow-
ers.

R. § 1194.
13 G. A. ch. 172,
§ 9.

Trustees or
managers of:
how elected.
R. § 1185.

10 G. A. ch. 12.

When under
the control of
synod or other
ecclesiastical
body.

Academical:
meetings.

14 G. A. ch. 48.

held, and business so transacted, shall be as legal and binding as if held and transacted at the place of business of the corporation in this state.

Election.
R. § 1196.

SEC. 1099. In case an election of trustees, directors, or managers shall not be made on the day designated by the by-laws, said society for that cause shall not be dissolved, but such election may take place on any other day directed by such by-laws.

Name of.
R. § 1197.
13 G. A. ch. 172,
§ 10.

SEC. 1100. The provisions of this chapter shall not extend or apply to any association or individual who shall, in the certificate filed with the recorder, use or specify a name or style the same as that of any previously existing incorporated society in the county.

Devise or be-
quest.
R. § 1198.

SEC. 1101. Any corporation formed under this chapter shall be capable of taking, holding, or receiving property by virtue of any devise or bequest contained in any last will or testament of any person whatsoever; but no person leaving a wife, child, or parent, shall devise or bequeath to such institution or corporation more than one-fourth of his estate after the payment of his debts, and such devise or bequest shall be valid only to the extent of such one-fourth.

Existing socie-
ties may re-in-
cporate.
R. § 1199.

SEC. 1102. The trustees, directors, or stockholders of any existing benevolent, charitable, scientific, missionary, or religious corporation, may, by conforming to the requirements of section ten hundred and ninety-five of this chapter, re-incorporate themselves, or continue their existing corporate powers, and all the property and effects of such existing corporation shall vest in and belong to the corporation so re-incorporated or continued.

CHANGING NAME.

[Fifteenth General Assembly, Chapter 40.]

Corporation
not for pecu-
niary profit
may change
name or amend
articles of in-
corporation.
How.

SEC. 1. Any corporation other than those for pecuniary profit may change the corporate name thereof, or amend the articles of incorporation or the original certificate thereto, by a vote of the majority of the members or stockholders of the said corporation in such manner as may be provided by the articles of incorporation thereof.

Bodies repre-
senting ecclesi-
astical
bodies pro-
ceedings.

SEC. 2. In case of the body corporate consisting of the trustees, directors, or managers of any benevolent, charitable, literary, scientific, religious, or missionary institution under the patronage of any synod, conference, association, or other ecclesiastical body in the state, or two or more of them, said amendment or change may originate with either of the said trustees, directors, or managers, or with either of the said patronizing bodies, but such change or amendment shall not be made without the vote of a majority of each of said trustees, directors, or managers, and of each of the said patronizing bodies, legally expressed and certified thereto by the secretary, clerk, or recording officer of such board of trustees, directors, or managers and of each of the patronizing bodies.

Record.

SEC. 3. The change or amendment of the articles of incorporation shall be recorded by the recorder of deeds as the original articles of incorporation are required to be, and the recorder shall make upon the margin of such record a reference to the book and

page of the record of such original articles of incorporation; and from and after the date of such act of recording such change or amendment shall be in full force and effect as the original articles of incorporation so amended.

SEC. 4. The corporation by its new name or with such amended articles of incorporation or certificate shall be entitled to all the rights, powers, immunities, and franchises that it possessed before such change or amendment, and shall be liable upon all contracts, obligations, liabilities entered into, incurred, or binding on such corporation by or under the old name or articles of incorporation to the same extent and manner as though no such change or amendment had been made.

Rights and
powers of
corporations
continued.

CHAPTER 3.

OF STATE AND COUNTY AGRICULTURAL AND HORTICULTURAL SOCIETIES.

SECTION 1103. There shall be held at the capitol of the state, on the second Wednesday of January in each year, a meeting of the board of directors of the Iowa State Agricultural Society, together with the president of each county society in the state, or other delegate therefrom duly authorized in writing, who shall, for the time being, be members of the board; and at such meeting, officers and directors shall be chosen, the place for holding the next annual exhibition shall be determined, premiums on essays and field crops shall be awarded, and all questions relating to the agricultural development of the state may be considered.

Meeting of di-
rectors of state
agricultural
society.
R. § 1701.

SEC. 1104. The officers chosen at such meeting shall be a president, vice-president, secretary, treasurer, and five directors. Officers: terms. R. § 1702. The president, vice-president, secretary, and treasurer, shall serve one year, and shall be directors by virtue of their office. The other directors shall serve two years, so that the entire number of such directors in the board shall always be ten, one-half of whom shall be chosen annually. Any five members of the board shall constitute a quorum when regularly convened; and the president of the society shall have power to call meetings of the board whenever he may deem it expedient.

[Sec. 1105, making an annual appropriation for the benefit of the society, repealed; 15th G. A., ch. 4.]

SEC. 1106. The premium list and rules of exhibition shall be determined and published by the board of directors prior to the first of April in each year.

Premium list.
R. § 1702.

SEC. 1107. The said board of directors shall make an annual report to the governor, embracing the proceedings of said society and board of directors for the past year, and an abstract of the proceedings of the several county societies, as well as a general view of the condition of agriculture throughout the state, accom-

panied with such essays, statements, and recommendations as they may deem interesting and useful, which reports shall be published by the state under the supervision of the secretary of the society. The number of copies to be published shall be three thousand, all of which shall be bound in a manner and style uniform with those bound by the state for the years one thousand eight hundred and fifty-nine and one thousand eight hundred and sixty; but said binding shall not cost more than thirty cents per copy.

Distribution of reports. SEC. 1108. The secretary of state shall distribute the reports as follows: Ten copies to the state university, ten copies to G. A. ch. 109, to the state library, ten copies to the state agricultural college, one copy to each member of the general assembly, the remainder to the secretary of the state agricultural society, by him to be distributed to the county agricultural societies; and one copy shall be sent to the board of supervisors of each organized county in which there is no agricultural society.

DISTRICT AND COUNTY SOCIETIES.

Premiums awarded.
R. § 1697.

SEC. 1109. All county agricultural societies shall, annually, offer and award premiums for the improvement of stock, tillage, crops, implements, mechanical fabrics, articles of domestic industry, and such other articles and improvements as they may deem proper. And they shall also so regulate the amount of premiums and the different grades of the same, that small as well as large farmers and artisans may compete therefor.

[The word "so" in the fifth line between "also" and "regulate," as it stands in the original, is omitted in the printed code.]

List of awards:
abstract of treasurer's account published: report to state society.
R. § 1698.

SEC. 1110. Each county society shall publish, annually, a list of the awards and an abstract of the treasurer's account, in one or more newspapers of the county or adjoining counties, and a report of their proceedings during the year, and a synopsis of the award. They shall also make a report of the condition of agriculture in their county, to the board of directors of the Iowa state agricultural society, which shall be forwarded by mail or otherwise to the secretary of said society on or before the first of December of each year. And the auditor of state, before issuing his warrant in favor of said societies for any amount, shall demand the certificate of the secretary of the state society that such report has been made.

Supervisors may appropriate aid.
11 G. A. ch. 128.
§ 1.

SEC. 1111. Whenever any county agricultural society, organized according to law, shall have procured in fee simple, free from incumbrance, land for fair grounds not less than ten acres in extent, the board of supervisors of said county may appropriate and pay to such society, a sum not exceeding one hundred dollars for every thousand inhabitants in said county, to be expended by such society in fitting up such fair grounds; but for no other purpose; but not more than one thousand dollars shall in the aggregate be appropriated to any one society.

Entitled to aid from state.
R. § 1704.
10 G. A. ch. 109.
§ 1.
12 G. A. ch. 136.
§ 1.

SEC. 1112. When any county or district agricultural society, composed of one or more counties, have made their report to the state society as provided in the preceding section, and raised during the year any sum of money for actual membership, they shall

be entitled to an equal sum, not exceeding two hundred dollars, from the state treasury, upon affidavit of the president, secretary, or treasurer of said society, that such sum was raised for the legitimate purposes of the society during the current year, accompanied by the certificate of the secretary of the state agricultural society that they have reported according to law.

SEC. 1113. Each society receiving such appropriation, shall, Make report to through its secretary, make to the board of supervisors a detailed statement, with vouchers, showing the legal disbursement of all the moneys so received. ^{supervisors. 11 G. A. ch. 128, § 2.}

FAIRS.

SEC. 1114. No person shall be permitted to sell any intoxicating liquors, wine, or beer of any kind, or be engaged in any gambling, horse racing, liquors, wine, and beer prohibited. county or district or state agricultural society fair is being held, ^{10 G. A. ch. 109, § 2.} or within one hundred and sixty rods thereof, during the time of holding such fair; and any person found guilty of any of the offenses herein enumerated, shall be fined in a sum not less than five nor more than fifty dollars for every such offense.

[As amended by 18th G. A., ch. 147, making the section applicable to the state agricultural society.]

SEC. 1115. The president of any district or county agricultural society may grant a written permit to such persons as he may deem necessary, to sell fruit, provisions, and other necessaries to such persons as may be in attendance at any such fair, under such regulations and restrictions as the board of directors may prescribe. ^{Permits to sell provisions on fair grounds. Same, § 3.}

SEC. 1116. The president of any such society shall be empowered to arrest, or cause to be arrested, any person, or persons, engaged in violating any of the provisions contained in section eleven hundred and fourteen of this chapter, and cause them forthwith to be taken before some justice of the peace, there to be dealt with as provided for in said section; and he may seize, or cause to be seized, all intoxicating liquors, wine, or beer, of any kind, with the vessels containing the same, and all tools or other implements used in any gambling, and may remove, or cause to be removed, all shows, swings, booths, tents, carriages, wagons, vessels, boats, or any other nuisance that may obstruct, or cause to be obstructed, by collecting persons around or otherwise, any thoroughfare leading to the enclosure in which such agricultural fair is being held; and any person owning or occupying any of the causes of obstruction herein specified, who may refuse or fail to remove such obstruction or nuisance, when ordered to do so by the president of such society, shall be liable to a fine of not less than five and not more than twenty dollars for every such offense. ^{Power to arrest, seize, remove, and fine given. Same, § 4.}

HORTICULTURAL SOCIETY.

SEC. 1117. There shall be held on the third Tuesday in January in each year, a meeting of the Iowa state horticultural society, for the transaction of business and the election of officers and directors, corresponding in numbers and titles to those of the Iowa ^{Meeting of. 14 G. A. ch. 25, § 3.}

agricultural society, and for like periods of time, at which the place of holding the next meeting, and the times and places of holding exhibitions shall be determined; premiums on essays may be awarded and all questions relating to horticultural development considered.

District and
county socie-
ties.
Same, § 2.

SEC. 1118. Such society shall encourage the organization of district and county societies and give them representation therein, and in every proper way further the fruit and tree growing interests of the state.

Annual report.
Same, § 4.

SEC. 1119. The secretary of said society shall make an annual report to the governor of the state, embracing the proceedings of the society, with a bill of items showing for what purposes the money hereinafter appropriated was paid out for the past year, the general condition of horticultural interests throughout the state, together with essays, statements of facts, and recommendations as he may deem useful, to be published by the state under the supervision of the society.

Printing and
distribution of.
Same, § 5.

SEC. 1120. The number of copies of said report shall be five thousand, all of which shall be bound in a style uniform with the reports of said society for the years eighteen hundred and sixty-nine and eighteen hundred and seventy, and shall be distributed by the secretary of state as follows: Twelve copies each to the governor, lieutenant-governor, secretary of state, auditor of state, treasurer, register of state land office, attorney-general, judges of the supreme court, and to each member of the general assembly; two hundred copies to the Iowa state agricultural college, five copies to the Iowa state university, five copies to the Iowa state horticultural society, two copies to each incorporated college in the state, one copy each to the auditor and clerk of the district court of each county to be kept in the office, and one copy to each newspaper published in the state; the remainder to be distributed by direction of said society.

[As amended ; 18th G. A., ch. 6.]

Appropriation
for.
Same, § 6.

SEC. 1121. The sum of one thousand dollars is appropriated, annually, for the use and benefit of said society, and shall be paid by the auditor of state upon the order of the president of said society, in such sums, and at such times, as may be for the interests of said society; but two hundred dollars of said amount shall be awarded in premiums for the growing of forest trees in this state.

CHAPTER 4.

OF INSURANCE COMPANIES.

SECTION 1122. When any number of persons associate themselves together for the purpose of forming an insurance company, or for any other purpose than life insurance, under the provisions of chapter one of this title, they shall publish a notice of such intention, once in each week for four weeks, in some public news-

How formed:
notice; certifi-
cate; attorney
general.
12 G. A. ch. 138,
§ 1.

paper in the county in which such insurance company is proposed to be located; and they shall also make a certificate, under their hands, specifying the name assumed by such company, and by which it shall be known, the object for which said company shall be formed, the amount of its capital stock, and the place where the principal office of said company shall be located; which certificate shall be acknowledged before and certified by some notary public or clerk of a court of record, and forwarded to the auditor of state, who shall submit the same to the attorney-general for examination, and if it shall be found by the attorney-general to be in accordance with the provisions of this chapter, and not in conflict with the constitution and laws of the United States, and of this state, he shall make a certificate of the fact and return it to the auditor of state, who shall reject the name or title applied for by any company when he shall deem the same too similar to any one already appropriated by any other company, or likely to mislead the public.

SEC. 1123. When the certificate of said company shall have received the approval of the attorney-general and auditor of state, the company shall cause the same to be recorded as required by law for recording articles of incorporation; and said persons, when incorporated, and, having in all respects complied with the provisions of this chapter, are hereby authorized to carry on the business of insurance as named in such certificate of incorporation, and by the name and style provided therein, and shall be deemed a body corporate with succession; they and their associates, successors, and assigns, to have the same general corporate powers, and be subject to all the obligations and restrictions of said chapter one of this title except as may be herein otherwise provided.

CAPITAL REQUIRED.

SEC. 1124. No joint stock company shall be incorporated under the provisions of this chapter, with a smaller capital than fifty thousand dollars, or a larger one than one million dollars, as may be specified in the certificate of incorporation, which stock shall be divided into shares of one hundred dollars each, of which capital not less than twenty-five per cent., and in no case less than twenty-five thousand dollars, shall be paid up in cash. The balance of the capital of said company may consist of the bonds or notes of the stockholders; nor shall any company, on the plan of mutual insurance, commence business in this state until agreements have been entered into for insurance with at least two hundred applicants, the premiums upon which shall amount to not less than twenty-five thousand dollars; of which at least five thousand dollars shall have been paid in actual cash, and for the remainder of which, notes of solvent parties, founded upon actual application for insurance made in good faith, shall have been received. No one of the notes received as aforesaid, shall amount to more than five hundred dollars; and no two thereof shall be given for the same risk, or made by the same person or firm, except where the whole amount of such notes does not exceed the sum of five hundred dollars; nor shall any note be regarded or represented as capital stock, unless a policy be issued upon the same within thirty

Amount:
shares: notes:
when payable:
certificate.
Same, § 3.

days after the organization of the company taking the same, upon a risk that shall be for no shorter period than twelve months. Each of said notes shall be payable, in whole or in part at any time when the directors shall deem the same requisite for the payment of losses by fire or inland navigation, and such incidental expenses as may be necessary for transacting the business of said company. And no note shall be accepted as part of such capital stock, unless the same shall be accompanied by a certificate of a justice of the peace, notary public, or clerk of the district court of the county in which the person executing such note shall reside, that the person making the same is, in his opinion, pecuniarily good and responsible for the same, in property not exempt from execution by the laws of their state; and no such note shall be surrendered while the policy for which it was given continues in force.

SEC. 1125. Having published the notice, and filed the publisher's affidavit of the publication thereof with the auditor of state, together with the certificate required by section eleven hundred and twenty-two of this chapter, the persons named in the certificate of incorporation, or a majority of them, shall be commissioners to open books for the subscription of stock to the company, at such times and places as to them may seem convenient and proper, and shall keep the same open until the full amount specified in the certificate is subscribed; or, in case the business of said company is proposed to be conducted on the plan of mutual insurance, then to open books to receive propositions and enter into agreements in the manner and to the extent specified in section eleven hundred and twenty-four of this chapter.

Subscription
books opened.
Same, § 4.

DIRECTORS—OFFICERS.

SEC. 1126. The affairs of any company organized under the provisions of this chapter, shall be managed by not more than twenty-one, nor by less than five directors, all of whom shall be stockholders. Within thirty days after the subscription book shall have been filled, a majority of the subscribers shall hold a meeting for the election of directors—each share entitling the holder thereof to one vote; and the directors then elected shall continue in office until their successors have been duly chosen and have accepted the trust.

SEC. 1127. The annual meetings for the election of directors, shall be held during the month of January, at such time as the by-laws of the company may direct; *provided, however,* that if for any cause the stockholders shall fail to elect at any annual meeting, then they may hold a special meeting some day subsequent thereto for that purpose, by giving thirty days' notice thereof in some newspaper in general circulation in the county in which the principal office of the company shall be located, and the directors chosen at any such annual or special meeting, shall continue in office until the next annual meeting and until their successors, duly elected, shall have accepted.

SEC. 1128. The directors shall choose, by ballot, a president from their own number, and shall fill all vacancies which shall arise in the board or in the presidency thereof; and the board of

Elect a pres-
ident and fill all
vacancies.
Same, § 10.

directors thus constituted, or a majority of them, when convened at the office of the company, shall be competent to exercise all the powers vested in them by this chapter.

SEC. 1129. The directors of any such company shall have power to appoint a secretary, and any other officers or agents necessary for transacting the business of the company, paying such salaries, and taking such securities as they may deem reasonable; they may ordain and establish such by-laws and regulations, not inconsistent with this chapter, or with the constitution and laws of the United States and of this state, as shall appear to them necessary for regulating and conducting the business of the company; and they shall keep full and correct entries of their transactions, which shall at all times, be open to the inspection of the stockholders, and to the inspection of persons invested by law with the right thereof.

Appoint officers and establish by-laws.
Same, § 11.

INVESTMENTS—EXAMINATION—INSURANCE.

SEC. 1130. It shall be lawful for any insurance company organized under this chapter, to invest its capital and the funds accumulated in the course of its business, or any part thereof, in bonds and mortgages on unincumbered real estate within the state of Iowa, worth double the sum loaned thereon, exclusive of buildings, unless such buildings are insured in some responsible company, and the policy transferred to said company, and also in stocks of this state, or stocks or treasury notes of the United States,—in the stocks or bonds of any county or incorporated city in this state authorized to be issued by the legislature of this state; and to lend the same, or any part thereof, on the security of such stocks or bonds, or treasury notes, or upon bonds and mortgages as aforesaid and not otherwise; and to change and re-invest the same in like securities as occasion may, from time to time, require; but any surplus money over and above the paid-up capital stock of any such company organized under this chapter, or incorporated under any law of this state, may be invested in or loaned upon the pledge of the public stock or bonds of the United States, or any one of the states, or the stocks, bonds, or other evidences of indebtedness of any solvent, dividend-paying institutions incorporated under the laws of this state or of the United States, except their own stock; if the current market value of such stock, bonds, or other evidences of indebtedness, shall be at all times, during the continuance of such loans, at least ten per cent. more than the sum loaned thereon.

Funds invested: security for loans required: changes therein.
Same, § 6.

SEC. 1131. Upon receiving notification that the requirements of the preceding sections have been complied with, the auditor of state shall make an examination, or cause one to be made by some disinterested person officially appointed by him for that purpose; and if it shall be found that the capital herein required of the company named, according to the nature of the business proposed to be transacted by such company, has been paid in and is possessed by it in money, or in such stock, notes, bonds, and mortgages as are required by sections eleven hundred and twenty-four and eleven hundred and thirty of this chapter, then he shall so certify; and if the examination be made by any other

Assets examined by auditor: officers to certify under oath.
Same, § 7.

than the auditor, then the finding shall be certified under oath; or, if it is proposed to be a mutual insurance company, such certificate shall be to the effect that it has received and is in actual possession of the capital, premiums, or actual engagements of insurance or other securities, as the case may be, to the extent and value required by sections eleven hundred and twenty-four and eleven hundred and thirty of this chapter. The name and the residence of the maker of each premium note forming part of the capital of any such proposed mutual insurance company, and the amount of such note, shall be returned to the auditor. The corporators or officers of any such company, or proposed company, shall be required to certify, under oath, to the auditor of state, that the capital exhibited to the person making the examination directed in this section, was, actually and in good faith, the property of the company so examined. The certificates above contemplated shall be filed in the office of said auditor, who shall thereupon deliver to such company a certified copy of the same, with his written permission for them to commence the business proposed in their written certificate of incorporation, which, being recorded by the recorder of the county in which the company is to be located, in a book prepared by him for that purpose, shall be their authority to commence business and issue policies; and such certified copy of said certificates may be used in evidence for or against said company with the same effect as the originals.

Kinds of insurance.
Same, § 8.

Fire and marine.

Health and accident.

Fidelity of persons.

Personal property.

Live stock.

Loan money on bottomry.

Confined to one kind of insurance.

SEC. 1132. It shall be lawful for any company organized under this chapter, or doing business in this state:

1. To insure houses, buildings, and all other kinds of property against loss or damage by fire or other casualty, and to make all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether on land or on water, or any vessel or boat, wherever the same may be;

2. To make insurance on the health of individuals, and against the personal injury, disablement, and death, resulting from traveling, or general accidents by land or water;

3. To insure the fidelity of persons holding places of private or public trust;

4. To receive on deposit and insure the safe keeping of books, papers, moneys, stocks, bonds, and all kinds of personal property;

5. To insure horses, cattle, and other live stock against loss, or damage by accident, theft, or any unknown or contingent event whatever which may be the subject of legal insurance; to lend money on bottomry or respondentia, and to cause itself to be insured against any loss or risk it may have incurred in the course of its business, and upon the interest which it may have in any property, by means of any loan which it may have made on mortgage, bottomry, or respondentia, and generally to do and perform all other matters and things proper to promote these objects.

But no company shall be organized to issue policies of insurance for more than one of the above five mentioned purposes, and no company that shall have been organized for either one of said purposes, shall issue policies of insurance for any other; and no company organized under this chapter, or transacting business in this state, shall expose itself to loss on any one risk or hazard to

an amount exceeding ten per cent. on its paid up capital, unless the excess shall be reinsured by the same in some other good and reliable company. But the restrictions as to the amount of risk any company shall assume, shall not apply to any companies organized to guarantee the fidelity of persons in places of public or private trust, nor to companies that receive on deposit and guarantee the safe keeping of books, papers, moneys, and other personal property.

Limit of risk.

SEC. 1133. All policies or contracts of insurance made or entered into by the company, may be made either with or without the seal of said company; but said policies shall be subscribed by the president, or such other officers as may be designated by the directors for that purpose, and shall be attested by the secretary thereof.

Policies of
Same, § 12.

SEC. 1134. Transfers of stock may be made by any stockholder, or his legal representative, subject to such restrictions as the directors shall establish in their by-laws, except as herein-after provided.

Transfer of
stock.
Same, § 13.

CAPITAL INCREASED—REAL ESTATE.

SEC. 1135. Whenever any company organized under this chapter, with less than the maximum capital limited in section eleven hundred and twenty-four hereof, shall, in the opinion of the directors thereof, require an increased amount of capital, they shall, if authorized by the holders of a majority of the stock to do so, file with the auditor of state a certificate setting forth the amount of such desired increase, not exceeding said maximum, and thereafter such company shall be entitled to have the increased amount of capital fixed by said certificate, and the examination of securities composing the capital stock thus increased, shall be made in the same manner as provided in section eleven hundred and thirty-one of this chapter for the capital stock first paid in.

How; certify
to auditor.
Same, § 14.

SEC. 1136. The directors, trustees, or managers of any insurance company organized under this chapter, or incorporated under any law of this state, shall not make any dividends, except from the surplus profit arising from their business; and, in estimating such profits, there shall be reserved therefrom a sum equal to forty per cent. of the amount received as premiums on unexpired risks and policies, which amount, so reserved, is hereby declared to be unearned premiums; and there shall also be reserved all sums due the corporation on bonds and mortgages, bonds, stocks, and book account, of which no part of the principal or interest thereon has been paid during the year preceding such estimate of profits, and upon which suit for foreclosure or collection has not been commenced, or which, after judgment has been obtained thereon, shall have remained more than two years unsatisfied, and on which interest shall not have been paid; and, in case of any such judgment, the interest due or accrued thereon and remaining unpaid, shall also be reserved. Any dividends made contrary to these provisions, shall subject the company making it to a forfeiture of their charter.

Dividends;
amount of res-
ervation; for-
feiture of char-
ter.
Same, § 15.

SEC. 1137. No company organized under this chapter shall purchase, hold, or convey any real estate, save for the purposes and in the manner herein set forth:

May own real estate. Same, § 16. 1. Such as shall be requisite for its convenient accommodation in the transaction of its business;

Mortgaged as security. 2. Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted, or for money due;

When taken in satisfaction of debts. 3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the legitimate business of the company, or for money due;

When purchased to secure debt. 4. Such as shall have been purchased at sales upon judgments, decrees, or mortgages obtained or made for such debt; and it shall not be lawful for any such company to purchase, hold, or convey real estate in any other case, or for any other purpose, or acquired in any other manner, except that it may convey real estate which shall be found in the course of its business not necessary for its convenient accommodation in the transaction thereof; and all such last mentioned real estate shall be sold and conveyed within three years after the same has been deemed by the auditor of state unnecessary for such accommodation, unless the company shall procure a certificate from the said auditor, that the interest of said company will materially suffer by a forced sale, in which event the sale may be postponed for such a period as the said auditor may direct in such certificate.

When to be sold.

DEPOSIT NOTES—LOSSES—POLICY.

SEC. 1138. All notes deposited with any mutual insurance company at the time of its organization, as provided in section eleven hundred and twenty-four hereof, shall remain as security for all losses and claims until the accumulation of the profits invested, as required by section eleven hundred and thirty of this chapter, shall equal the amount of cash capital required to be possessed by stock companies organized under this chapter, the liability of each note decreasing proportionately as the profits are accumulating; but any note which may have been deposited with any mutual insurance company subsequent to its organization, in addition to the cash premiums on any insurance effected with such company, may, at the expiration of the time of such insurance, or upon the cancellation by the company of the policy, be relinquished and given up to the maker thereof, or his legal representatives, upon his paying his proportion of losses and expenses which may have accrued thereon during such term. The directors or trustees of any such company shall have the right to determine the amount of the note to be given, in addition to the cash premium, by any person insured in such company; and every person effecting insurance in any mutual company, and also his heirs, executors, administrators, and assigns, continuing to be so insured, shall thereby become members of said company during the period of insurance, and shall be bound to pay for losses, and such necessary expenses as aforesaid, accruing to said company in proportion to his or their deposit note. But any person insured in any mutual company, except in the case of notes required by this chapter to be deposited at the time of its organization, may, at any

Mutual companies: notes given at organization of and subsequently. Same, § 17.

time return his policy for cancellation, and, upon payment of the amount due at such time upon his premium note, shall be discharged from further liability thereon.

SEC. 1139. The directors shall, as often as they deem necessary, after receiving notice of any loss or damage, settle and determine the sums to be paid by the several members thereof as their respective portion of such loss, and publish the same in such manner as they shall deem proper, or the by-laws shall have prescribed; but the sum to be paid by each member shall always be in proportion to the original amount of his deposit note, and shall be paid to the officers of the company within thirty days after the publication of said notice; and if any member shall, for the space of thirty days after personal demand, or by letter, for payment shall have been made, neglect or refuse to pay the sum assessed upon him as his proportion of any loss aforesaid, the directors may sue for and recover the whole amount of his deposit note, with costs of suit; but execution shall issue for assessments and costs as they accrue only, and every such execution shall be accompanied by a list of losses for which the assessment was made. If the whole amount of deposit notes shall be insufficient to pay the loss occasioned, the sufferers insured by said company shall receive, toward making good their respective losses, a proportionate share of the whole amount of said notes, according to the sums to them respectively insured; but no member shall ever be required to pay for any loss more than the whole amount of his deposit note.

SEC. 1140. Every insurance company hereafter organized as provided in this chapter, shall, if it be a mutual company, embody the word "mutual" in its title, which shall appear upon the first page of every policy and renewal receipt; and every company doing business as a cash stock company, shall, upon the face of its policies, express in some suitable manner that such policies were issued by stock companies.

ANNUAL STATEMENT.

SEC. 1141. The president, or the vice-president and secretary, of each company organized under this chapter, or incorporated under any law of this state, or doing business in this state, shall, annually, on the first day of January of each year, or within thirty days thereafter, prepare, under oath, and deposit in the office of the auditor of state, a full, true, and complete statement of the condition of such company on the last day of the month preceding that in which such statement is filed, which last statement shall exhibit the following items and facts in the following form, to-wit:

- | | |
|--|--------------------------|
| <i>First</i> —The amount of capital stock of the company; | Capital. |
| <i>Second</i> —The name of the officers; | Name of officers. |
| <i>Third</i> —The name of the company, and where located; | Of company and location. |
| <i>Fourth</i> —The amount of its capital stock paid up; | Capital paid up. |
| <i>Fifth</i> —The property or assets held by the company, specifying: | |
| 1. The value, as nearly as may be, of the real estate owned by such company; | Assets.
Real estate. |
| 2. The amount of cash on hand and deposited in banks to the credit of the company, and in what bank the same is deposited; | Cash on hand. |

- In transit. 3. The amount of cash in the hands of agents, and in the course of transmission;
- Mortgages. 4. The amount of loans secured by first mortgage on real estate, with the rate of interest thereon;
- Loans. 5. The amount of all other bonds and loans, and how secured, with the rate of interest thereon;
- Judgments. 6. The amount due the company on which judgment has been obtained;
- Stocks. 7. The amount of stocks of this state, of the United States, of any incorporated city of this state, and of any other stocks owned by the company, specifying the amount, number of shares, and par and market value of each kind of stock;
- Collaterals. 8. The amount of stock held by such company as collateral security for loans, with amount loaned on each kind of stock, its par and market value;
- Assessments. 9. The amount of assessments on stock and premium notes, paid and unpaid;
- Interest. 10. The amount of interest actually due and unpaid;
- Securities. 11. All other securities and their value;
- Notes. 12. The amount for which premium notes have been given on which policies have been issued.
- Liabilities. *Sixth*—Liabilities of such company, specifying:
- Losses. 1. The losses adjusted and due;
2. The losses adjusted and not due;
3. Losses unadjusted;
4. Losses in suspense and the cause thereof;
5. Losses resisted and in litigation;
- Dividends. 6. Dividends, either in script or cash, specifying amount of each, declared but not due;
7. Dividends declared and due;
- Re-insurance. 8. The amount required to reinsure all outstanding risks on the basis of forty per cent. of the premium on all unexpired risks;
- Amounts due. 9. The amount due banks or other creditors;
- Money bor-
rowed. 10. The amount of money borrowed and the security therefor;
- Other claims. 11. All other claims against the company.
- Income. *Seventh*—The income of the company during the previous year, specifying:
- Premiums. 1. The amount received for premiums, exclusive of premium notes;
2. The amount of premium notes received;
- Notes. 3. The amount received for interest;
- Interest. 4. The amount received for assessments, or calls on stock notes, or premium notes;
- Assessments. 5. The amount received from all other sources.
- Other sources. *Eighth*—The expenditures during the preceding year, specifying:
- Expenditures. 1. The amount of losses paid during said term, stating how much of the same accrued prior, and how much subsequent, to the date of the preceding statement, and the amount at which losses were estimated in such statement;
- Loses paid. 2. The amount paid for dividends;
- Dividends. 3. The amount paid for commissions, salaries, expenses, and other charges of agents, clerks, and other employes;
- Salaries. 4. The amount paid for interest;

4. The amount paid for salaries, fees, and other charges of officers and directors;

5. The amount paid for local, state, national, internal revenue, and other taxes and duties;

6. The amount paid for all other expenses, expenditures, including printing, stationery, rents, furniture, etc.;

Ninth—The largest amount insured in any one risk.

Risks.

Tenth—The amount of risks written during the year then ending.

Eleventh.—The amount of risks in force, having less than one year to run.

Twelfth.—The amount of risks in force, having more than one, and not over three years to run.

Thirteenth.—The amount of risks having more than three years to run.

Fourteenth.—The following question must be answered, viz: Question. Are dividends declared on premiums received for risks not terminated?

Fifteenth.—Each accident insurance company, or company insuring against accidents in this state, shall keep a register of tickets sold by its officers or agents, which register shall show the name and residence of the person insured, the amount of such insurance, the date of issue of such ticket, and the time the same will remain in force, and every such company shall file in the office of the auditor of state, in January of each year, a report, sworn to by the president or secretary of the company, showing the above items of the business of such company during the preceding year, and the auditor of state shall withhold the certificate of authority from any such company neglecting or failing to comply with the provisions of this section.

Accident companies: ticket register.

SEC. 1142. The auditor of state is hereby authorized and empowered to address any inquiries to any insurance company in relation to its doings and condition, or any other matter connected with its transactions, which he may deem necessary for the public good, or for a proper discharge of his duties, and any company so addressed shall promptly reply in writing thereto.

Auditor may require information. Same, § 21.

SEC. 1143. The statement of any company, the capital of which is composed in whole, or in part, of notes, shall, in addition to the foregoing, exhibit the amount of notes originally forming the capital, and also what proportion of said notes is still held by such company and considered capital.

Additional exhibit. Same, § 22.

FOREIGN COMPANIES—CAPITAL REQUIRED.

SEC. 1144. No insurance company, association, or partnership, organized or associated for any of the purposes specified in this chapter, incorporated by, or organized under, the laws of any other state or any foreign government, shall, directly or indirectly, take risks or transact any business of insurance in this state, unless possessed of two hundred thousand dollars of actual paid-up capital, exclusive of any assets of any such company deposited in any other states or territories for the special benefit or security of the insured therein; provided, that the foregoing provisions of this section shall not apply to foreign mutual hail insurance companies,

issuing policies for a term of one year or less ; and any such company desiring to transact any such business as aforesaid, by an agent or agents in this state, shall file with the auditor of state a written instrument, duly signed and sealed, authorizing any agent or agents of such company in this state, to acknowledge service of process for and in behalf of such company in this state, consenting that service of process, original, mean, or final, upon any such agent or agents, shall be taken and held as valid as if served upon the company according to the laws of this or any other state, and waiving all claim or right of error, by reason of such acknowledgment or service; and also a certified copy of their charter or deed of settlement, together with a statement, under oath, of the president or vice-president, or other chief officer, and the secretary of the company for which they may act, stating the name of the company and the place where located, the amount of its capital, with a detailed statement of the facts and items required from companies organized under the laws of this state, as per section eleven hundred and forty-one hereof; also a copy of the last annual report, if any, made under any law of the state by which such company was incorporated; and no agent shall be allowed to transact business for any company whose capital is impaired by liabilities as stated in section eleven hundred and forty-one of this chapter, to the extent of twenty per cent. thereof, while such deficiency shall continue. Any mutual fire insurance company possessed of cash assets safely invested, amounting to at least two hundred thousand dollars over and above all its liabilities, including the reserve for re-insurance required by the laws of this state, shall be deemed to be " possessed of two hundred thousand dollars of actual paid up capital," within the meaning of this section, and may be authorized to take risks and transact the business of insurance in this state, on complying with the requisitions of said chapter four, relating to insurance companies incorporated by or under the laws of other states; subject, however, to all the provisions of said chapter, applicable to such insurance companies and all other acts and laws relating to insurance so far as applicable.

Cash assets:
paid up capital.

[As amended by the insertion of the proviso as to foreign mutual hail insurance companies, 15th G. A., ch. 55; and by the addition of the provisions as to mutual fire insurance companies, 16th G. A., ch. 60.]

Service of process may be made in the state: *Niagara F. Ins. Co. v. Rodecker*, 47-162.

RISKS—AGENTS.

Certificate re-
quired before
risks taken.
12 G. A. ch. 138,
§ 24.

Make annual
statements.
Same, § 25.

SEC. 1145. No agent shall act for any insurance company referred to herein, directly or indirectly, in taking risks or transacting business of insurance in this state, without procuring from the auditor of state a certificate of authority, stating that such company has complied with all the requisitions of this chapter.

SEC. 1146. The statements and evidences of investment required of foreign companies as above, shall be renewed, annually, in such manner and form as required hereby and as said auditor may direct, with any additional statement of the amount of the losses incurred or premiums received in this state during the

preceding period, so long as such agency continues. And the said auditor, on being satisfied that the capital, securities, and investments remain secure, as hereinbefore provided, shall furnish a renewal of his certificates as aforesaid. All notes taken for policies of insurance in any company doing business in this state, shall state upon their face that they have been taken for insurance, and shall not be collectible unless the company and its agents have fully complied with the laws of this state relative to insurance.

A negotiable note which does not state upon its face that it has been taken for insurance will not be subject, in the hands of an innocent holder, to the defense here indicated.

The maker must have that fact appear upon the face of the note if he desires to rely upon such defense: *Cook v. Weirman*, 51-561.

Notes given for
insurance:
when not col-
lectible.

SEC. 1147. Every insurance company organized under the laws of, or doing business in, this state, shall conform to all the provisions of this chapter applicable thereto, and, when necessary, any existing company shall change its charter and by-laws, so as to conform hereto, by a vote of a majority of its board of directors; and any president, secretary, or other officer of any company organized under the laws of Iowa, or any officer or person doing, or attempting to do, business in this state for any insurance company organized without this state, failing to comply with any of the requirements of this chapter, or violating any of the provisions thereof, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not exceeding one thousand dollars, and be imprisoned in the county jail for a period not less than thirty days nor more than six months.

This does not prevent the officers of a company, which has not complied with the law, from reinsuring their risks in another company and trans-

Conform to
provisions of
this chapter;
penalty for fail-
ure.
Same, § 26.

ferring to such company the premium notes received therefor: *Davenport F. Ins. Co. v. Moore*, 50-619.

SEC. 1148. Every agent of any insurance company, shall, in all advertisements of such agency, publish the location of the company, giving the name of the city, town, or village in which the company is located, and the state or government under the laws of which it is organized. The term agent, used in the foregoing sections, shall include any other person who shall, in any manner, directly or indirectly, transact the insurance business of any insurance company not incorporated by the laws of this state. The provisions of the foregoing sections relative to foreign companies, shall apply to all such companies, partnerships, associations, or individuals, whether incorporated or not.

Advertis-
ments: what
to contain.
Same, § 27.

EXAMINATION BY AUDITOR.

SEC. 1149. The auditor of state shall, whenever he deems it expedient so to do, appoint one or more persons, not officers, agents, or stockholders of any insurance company doing business in this state, to examine into the affairs and condition of any insurance company incorporated or doing business in this state, or to make such examination himself; and the officers or agents of such company or companies shall cause their books to be opened for the inspection of the auditor or the person or persons so ap-

Auditor may
appoint exam-
iners: their
powers: pro-
ceedings when
assets are im-
paired.
Same, § 28.

pointed, and otherwise facilitate such examination so far as may be in their power so to do; and for the purpose of arriving at the truth in such case, the auditor, or the person or persons so appointed by him, shall have power to examine, under oath, the officers or agents of any company, or others if necessary, relative to the business and condition of said company; and whenever the auditor shall deem it best for the interest of the public so to do, he shall publish the result of such investigation in one or more papers in this state; and whenever it shall appear to the auditor, from such examination, that the assets and funds of any company incorporated in this state are reduced or impaired by the liabilities of said company, as described under the head of liabilities in the statement required by this chapter, more than twenty per cent. below the paid-up capital stock required hereby, he may direct the officers thereof to require the stockholders to pay in the amount of such deficiency, within such a period as he may designate in such requisition, or he shall communicate the fact to the attorney-general, who shall apply to the district or circuit court, or, if in vacation, to one of the judges thereof, for an order requiring said company to show cause why their business should not be closed; and the court, or judge, as the case may be, shall thereupon proceed to hear the allegations and proofs of the respective parties; and in case it shall appear to the satisfaction of said court, or judge, that the assets and funds of said company are not sufficient, as aforesaid, or that the interest of the public requires it, the said court, or judge, shall decree a dissolution of said company and a distribution of its effects. The said court, or judge, shall have power to refer the application of the attorney-general to a referee, to inquire into and report upon the facts stated therein.

SEC. 1150. Any company receiving the aforesaid requisition from the auditor, shall forthwith call upon its stockholders for such amounts as will make its paid-up capital equal to the amount fixed by this chapter, or the charter of said company; and in case any stockholder shall refuse or neglect to pay the amount so called for, after notice personally given, or by advertisement in such time and manner as said auditor shall approve, it shall be lawful for the said company to require the return of the original certificate or stock held by such stockholder, and in lieu thereof to issue new certificates for such number of shares as the said stockholder may be entitled to in the proportion that the ascertained value of the funds of the said company may be found to bear to the original capital of the said company; the value of such shares for which new certificates shall be issued to be ascertained under the direction of the said auditor, the company paying for the fractional parts of shares; and it shall be lawful for the directors of such company to create new stock and dispose of the same, and to issue new certificates therefor, to an amount sufficient to make up the original capital of the company. And in the event of any additional losses accruing upon new risks, taken after the expiration of the period limited by the said auditor in the aforesaid requisition for the filling up of the deficiency in the capital of such company, and before said deficiency shall have been made up, the directors shall be individually liable to the extent thereof.

Requisition on
stockholders:
liability of di-
rectors.
Same, § 29.

SEC. 1151. If, upon such examination, it shall appear to the auditor, that the assets of any company, chartered upon the plan of mutual insurance under this chapter, are insufficient to justify the continuance of such company in business, he shall proceed in relation to such company in the same manner as herein required in regard to joint-stock companies; and the trustees or directors of such company are made personally liable for any losses which may be sustained upon risks taken after the expiration of the period limited by the auditor for filling up the deficiency in the capital, and before such deficiency shall have been made up. Any transfer of the stock of any company organized under this chapter, made during the pending of any investigation required above, shall not release the party making the transfer from his liability for losses, which may have accrued previous to such transfer.

SEC. 1152. The auditor of state shall be authorized to examine into the condition and affairs of any insurance company, as provided for in this chapter, doing business in this state, not organized under the laws of this state, or cause such examination to be made by some person or persons appointed by him, having no interest in any insurance company; and, whenever it shall appear to the satisfaction of said auditor that the affairs of any such company are in an unsound condition, he shall revoke the certificates granted in behalf of such company, and shall cause a notification thereof to be published in some newspaper of general circulation published in the city of Des Moines, and the agent or agents of such company are, after such notice, required to discontinue the issuing of any new policy, or the renewal of any previously issued.

FEES.

SEC. 1153. There shall be paid by every company doing business in this state, except companies organized under the laws of this state, the following fees:

Upon filing declaration, or certified copy of charter, twenty-five dollars;

Upon filing the annual statement, twenty dollars;

For each certificate of authority, and certified copy thereof, two dollars;

For every copy of any paper filed in the department, the sum of twenty cents per folio, and for affixing the official seal to such copy, and certifying the same, one dollar;

For valuing policies of life insurance companies, ten dollars per million of insurance or for any fraction thereof;

For official examinations of companies under this act, the actual expense incurred.

And companies organized under the law of this state, shall pay the following fees:

For filing and examination of the first application of any company, and the issuing of the certificate of license thereon, ten dollars;

For filing each annual statement, and issuing the renewal of license required by law, three dollars;

For each certificate of authority to its agents, fifty cents.

Laws of other states. SEC. 1154. When, by the laws of any other state, any taxes, fines, penalties, licenses, fees, deposits of moneys or of securities, or other obligations or prohibitions, are imposed, or would be imposed, on insurance companies of this state, doing, or that might seek to do, business in such other state, or upon their agents therein, so long as such laws continue in force, the same obligations and prohibitions, of whatever kind, shall be imposed upon all insurance companies of such other state doing business within this state, or upon their agents here.

Certificate of auditor to be published annually. SEC. 1155. Every insurance company of the kind provided for in this chapter, doing business in this state, organized under the laws of this state or any other state or country, shall publish annually, in two newspapers of general circulation, one of which shall be published at the capital of this state, and in case of any company organized in the state of Iowa, one of which shall be published in the county where the principal office is located, a certificate from the auditor of state that such company has, in all respects, complied with the laws of this state relating to insurance. Said certificate shall also contain a statement, under the oath of the president or secretary of such insurance company, of the actual amount of paid-up capital, the aggregate amount of assets and liabilities at the date of such certificate, together with the aggregate income and expenditures of such company for the year preceding the date of such certificate.

Expenses; by whom paid. SEC. 1156. The necessary expenditure of any examination made, or ordered to be made, by the auditor of state under this chapter, shall be certified to by him and paid on his requisition, by the company which is the subject of such examination. In case of the refusal by any company to pay the requisition of the auditor of state the necessary expenses, it shall be the duty of the auditor to suspend such company from doing business in this state until said expenses are paid; if not so paid, the same may be audited and allowed by the executive council and paid out of any money in the treasury not otherwise appropriated.

[A substitute for the original section; 16th G. A., ch. 37.]

STATEMENTS PUBLISHED.

Auditor to furnish printed forms. SEC. 1157. The auditor of state shall cause to be prepared and furnished to each company organized under the laws of this state, and to the attorney or agent of each company incorporated by other states and foreign governments, who may apply for the same, printed forms of statements required by this chapter, and he may, from time to time, make such changes in the forms of these statements as shall seem to him best adapted to elicit from the companies a true exhibit of their condition, in respect to the several points hereinbefore enumerated.

Auditor to make and publish report. SEC. 1158. The auditor of state shall cause the information contained in the statements required of the companies organized or doing business in this state, to be arranged in a tabular form, and prepare the same in a single document for printing, which report shall be made on or before the first day of May of each year, and three thousand copies shall be printed for the use of

the auditor, who shall furnish a copy to each member of the general assembly and one to each newspaper printed in the state.

[A substitute for the original section; 16th G. A., ch 164.]

SEC. 1159. No company organized upon the mutual plan, shall do business or take risks upon the stock plan; neither shall a company organized as a stock company, do business upon the plan of a mutual insurance company.

SEC. 1160. Nothing in this chapter shall be so construed as to prevent any number of persons from making mutual pledges and giving valid obligations to each other for their own insurance from loss by fire or death, but such association of persons shall in no case insure any property not owned by one of their own number, and no life except that of their own numbers, nor shall the provisions of this chapter be applicable to such associations or companies. Each fire insurance company organized under the provisions of this chapter shall report in January of each year, to the auditor of state, which report shall show the following facts:

1. Name of company.
2. Place of doing business.
3. Names of president and secretary.
4. Address of secretary.
5. Date of commencing business.
6. Amount of risks in force at the beginning of the year.
7. Amount of risks written during the year.
8. Amount of risks cancelled during the year.
9. Amount of risks in force at the end of the year.
10. Amount of losses paid during the year.
11. Amount of other expenses.
12. Total expenses during the year.

These reports to be tabulated by the auditor of state, and published by him in his annual report on insurance, and one copy shall be sent to each company reporting as above. But no foreign life insurance company, aid society, or association for the insurance of the lives of its members and doing business on the assessment plan, shall be allowed to do business in this state unless it has a guaranteed capital of not less than one hundred thousand dollars in the state in which it is organized, and such companies shall pay the same fees for annual reports as are now paid by stock companies.

And such companies organized under this section shall pay the same fees for annual reports as are now paid by stock companies, but such association or companies, shall receive no premiums nor make any dividends; but the word premiums herein, shall not be construed to mean policy and survey fees, nor the necessary expenses of such companies.

[Substitute for the original section; 17th G. A., ch. 104. It had previously been amended by 16th G. A., ch. 103.]

[Seventeenth General Assembly. Chapter 39.]

SEC. 1. The auditor of state shall have power, and it shall be his duty, to examine the form of all policy contracts hereafter issued, or proposed to be issued, by any fire insurance company, association, or corporation now authorized by law, or that may hereafter apply to be authorized to transact the business of

Auditor of state to examine form of policies.

fire insurance in this state, and the auditor shall refuse to authorize any such company, association, or corporation to do business in this state, and shall not renew the authority or certificates of any such company, association, or corporation authorized to do business in this state, whenever the form of policy, contract, issued or proposed to be issued by any such company, association, or corporation does not provide for the cancellation of the same at the request of the insured upon equitable terms, and in case of any violation of this act, it shall be the duty of the auditor to revoke the authority of such company to do business within this state. The provisions of this act shall not apply until January 1, 1879, to any company now holding a certificate of authority from the auditor to do business in this state.

Authority revoked.

Unlawful for any company or agent to make false statement of assets.

Publication of financial standing shall truly exhibit capital, &c.

Exception.

PUBLICATION OF FALSE STATEMENTS.

[Seventeenth General Assembly, Chapter 111.]

SEC. 1. It shall not be lawful for any company, corporation, association, individual or individuals, now transacting or now or hereafter authorized, under any existing or future laws of this state, to transact the business of fire insurance within this state, to state or represent either by advertisement in any newspaper, magazine, or periodical, or by any sign, circular, card, policy of insurance, or certificate of renewal thereof, or otherwise, any funds or assets to be in possession of any such company, corporation, association, individual or individuals, not actually possessed by such company, corporation, association, individual or individuals, and available for the payment of losses by fire, and held for the protection of holders of policies of fire insurance.

SEC. 2. Every advertisement or public announcement, and every sign, circular, or card hereafter made or issued by any company, corporation, association, individual or individuals, or any officer, agent, manager or legal representative thereof, now, or hereafter authorized by any existing or future laws of this state to transact the business of fire insurance within this state, which shall purport to make known the financial standing of any such company, corporation, association, individual or individuals, shall exhibit the capital actually paid in, in cash and the amount of net surplus of assets over all liabilities of such company, corporation association, individual or individuals, actually available for the payment of losses by fire and held for the protection of holders of their policies of fire insurance, and shall also exhibit the amount of net surplus of assets over all liabilities in the United States actually available for the payment of losses by fire and held in the United States for the protection of holders of their policies of fire insurance in the United States, including in such liabilities the fund reserved for re-insurance of outstanding risks; and shall correspond with the verified statement made by the company, corporation, association, individual or individuals making or issuing the same to the insurance department of this state next preceding the making or issuing the same. The provisions of this section shall not apply to companies, corporations or associations organized and doing business under the laws of this state.

SEC. 3. Nothing in this act shall be construed to prohibit any

insurance company or association from publishing in any policy Not to prevent publication of amount of of their capital as set forth in their charter, act of incorporation, capital in deed of settlement or articles of association under which they are policy. authorized to transact the business of insurance.

SEC. 4. Any violation of any provision of this act shall, for Penalty. the first offense, subject the company, corporation, association, individual or individuals guilty of such violation, to a penalty of five hundred dollars, to be sued for and recovered in the name of the state, with costs and expenses of such prosecution by the district attorney of any county in which the company, corporation, association, individual or individuals shall be located or may transact business, or in any county where such offense may be committed, and such penalty when recovered shall be paid into the treasury of such county for the benefit of the school fund of said county. Every subsequent violation shall subject the company, corporation, association, individual or individuals guilty of such violation to a penalty of not less than one thousand dollars, which shall be sued for, recovered and disposed of in like manner as for the first offense.

FORFEITURES OF POLICIES.

[Eighteenth General Assembly, Chapter 210.]

SEC. 1. In every instance where a fire insurance company or Failure to pay premium note not to work for- association doing business in this state, shall hereafter take a note or contract for the premium on any insurance policy, or shall hereafter take a premium note or contract which, by its terms or provided by any agreement or rule of the company or association, is assessable for the premium due on the policy for which it was given, such insurance company or association shall not declare such policy forfeited or suspended for non-payment of such note or contract, except as hereinaster provided, anything in the policy or application to the contrary notwithstanding.

SEC. 2. Within thirty days prior to, or at any time after the maturity of any note or contract, whether assessable, or where the time of payment is fixed in the contract, given for the premium on any policy of insurance, such company or association may serve a notice, in writing, upon the insured, that his note, or an installment thereof, is due, or to become due, stating the amount which will be due on the note or contract, and also the amount required to pay the customary short-rates, including the expense of taking the risk up to the time the policy will be suspended under the notice in order to cancel the policy, and that, unless payment is made within thirty days, his policy will be suspended. Such notice may be served either personally or by registered letter addressed to the insured, at his post office address, named in or on the policy, and no policy of insurance shall be suspended for non-payment of such amount until thirty days after such notice has been served.

SEC. 3. The assured may, at any time after the maturity of the note, contract or installment, pay to the insurance company or association the customary short rates, including the expense of taking the risk, and the cost of suit, in case suit has been com- Assured may have policy and note can- celled upon payment of short rates, &c.

menced or judgment rendered on the note or contract, and upon such payment, if he so elect, his said policy shall be cancelled, and any note or contract, or any judgment rendered thereon, shall be cancelled and shall be actually void in whomsoever hands the same may be. *Provided*, that the assured may at any time before cancellation of the policy, pay to the insurance company or association the full amount due upon any note or contract, and from the date of such payment the policy shall be revived, and shall be in full force and effect. *Provided*, such payment is made during the time stated in the policy and before a loss occurs. *And provided further*, that when any insurance company or association shall bring suit upon such note or contract and shall collect the same, from the date of such collection the policy shall be revived and be in full force from the time of such collection. *Provided*, such collection is made during the time stated in the policy and before a loss occurs. The provisions of this act shall apply to and govern all contracts and policies of insurance contemplated in this chapter, anything in the application or policy to the contrary notwithstanding.

Policy revived by payment of amount due on note.

Collection of note by suit revives policy.

Provisions applicable to all contracts and policies of insurance.

SOLICITING AGENTS—APPLICATIONS—POLICIES.

[Eighteenth General Assembly, Chapter 211.]

SEC. 1. Any person who shall hereafter solicit insurance or procure applications therefor, shall be held to be the soliciting agent of the insurance company or association issuing a policy on such application, or on a renewal thereof, anything in the application or policy to the contrary notwithstanding.

Solicitor of insurance deemed agent.

Copy of application to be attached to policy.

Otherwise the company cannot rely upon such application as a defense.

Amount stated in policy is *prima facie* evidence of insurable value.

But actual value may be shown.

SEC. 2. All insurance companies or associations shall upon the issue, or renewal, of any policy attach to such policy, or indorse thereon, a true copy of any application or representation of the assured, which, by the terms of such policy, are made a part thereof, or of the contract of insurance, or referred to therein, or which may in any manner affect the validity of such policy. The omission so to do shall not render the policy invalid, but if any company or association neglects to comply with the requirements of this section, it shall forever be precluded from pleading, alleging or proving such application or representations or any part thereof, or falsity thereof, or any parts thereof, in any action upon such policy and the plaintiff in any such action shall not be required, in order to recover against such company or association, either to plead or prove such application or representation, but may do so at his option.

SEC. 3. In any suit or action brought in any court in this state on any policy of insurance against the company or association issuing the policy sued upon in case of the loss of any building so insured, the amount stated in the policy shall be received as *prima facie* evidence of the insurable value of the property at the date of the policy; *provided*, nothing herein shall be construed to prevent the insurance company or association from showing the actual value at the date of the policy and any depreciation in the value thereof before the loss occurred; *provided, further*, such insurance company or association shall be liable for the actual value of the

property insured at the date of the loss, unless such value exceeds the amount stated in the policy, and in order to maintain his action on the policy, it shall only be necessary for the insured to prove the loss of the building insured, and that he has given the company or association notice in writing of such loss, accompanied by an affidavit stating the facts as to how the loss occurred, so far as they are within his knowledge, and the extent of the loss; which notice shall be given within sixty days from the time the loss occurred; *provided, further,* that no action shall be begun within ninety days after notice of such has been given; all the provisions of this chapter shall apply to and govern all contracts and policies of insurance contemplated in this chapter, any thing in the policy or contract to the contrary notwithstanding.

Extent of company's liability.
Notice and affidavit of loss.
Action not to be brought until ninety days after notice of loss.

CHAPTER 5.

OF LIFE INSURANCE COMPANIES.

SECTION 1161. Every company formed for the purpose of insuring the lives of individuals, whether organized under the laws of this state or of any other state, or foreign country, shall, before issuing any policies on lives within this state, comply with the conditions and restrictions of this chapter.

SEC. 1162. Joint stock companies, organized under the laws of this state, shall have not less than one hundred thousand dollars of capital stock subscribed, twenty-five per cent. of which shall be paid up and invested in stocks of the United States, or of this state, or in bonds and mortgages upon unencumbered real estate in the state of Iowa, worth, exclusive of improvements, at least double the sum loaned thereon, which said securities shall be deposited with the auditor of state, and, upon said deposit, and satisfactory evidence to the auditor that the capital stock is all subscribed in good faith, he shall issue to said company the certificate hereinafter provided for. But no part of the twenty-five per cent. aforesaid, shall be loaned to any stockholder or officer of the company; the remainder of such stock shall be paid in such time as the directors or trustees of the company may direct, and the same shall be secured by the notes of the stockholders of said company. No note shall be accepted as part of such capital stock, unless the same shall be accompanied by a certificate of a justice of the peace, notary public, or clerk of the district court of the county in which the person executing such note shall reside, that the person making the same is, in his opinion, pecuniarily good and responsible for the same in property not exempt from execution by the laws of this state.

SEC. 1163. Companies organized under the laws of this state upon the mutual plan, shall, before issuing any policies, have actual applications on at least two hundred and fifty individual lives, for an average amount of one thousand dollars each, a list of which applications, giving the name, age, residence, amount of

Mutual companies: application for insurance: conditions. Same, § 2.

insurance, and annual premium of each applicant, shall be filed with the auditor of state, and a deposit made with said auditor of an amount equal to three-fifths of the whole annual premium on said applications, either in cash or the securities required by the foregoing section, and, on compliance with said provisions, the auditor shall issue to said mutual company the certificate herinafter prescribed.

AGENTS—RISKS.

Foreign companies: pre-requisites to insurance.
Same, § 4.

SEC. 1164. No person shall act within this state as agent, or otherwise, in receiving or procuring applications for insurance, or in any manner to aid in transacting the business of insurance referred to in section eleven hundred and sixty-one hereof, for any company or association incorporated by, or organized under, the laws of any state or government, unless such company is possessed of the amount of actual capital required of any company in this state, and the same is invested in stocks or treasury notes of the United States, or this state, or of interest-paying bonds of the state in which said company is located, or where said deposits are made, or in bonds and mortgages on unencumbered real estate within the state where such company is located, but all mortgages deposited by any company under this section, shall be upon unencumbered real estate worth double the amount loaned thereon; which stock and securities shall be deposited with the auditor, controller, or chief financial officer of the state by whose laws said company is incorporated, or some other state, and the auditor of this state furnished with a certificate of such auditor, controller, or chief financial officer aforesaid, under his hand and official seal, that he, as such auditor, controller, or chief financial officer of such state, holds in trust and on deposit, for the benefit of all the policy-holders of such company, the security before mentioned, which certificate shall embrace the items of security so held, and that he is satisfied that such securities are worth one hundred thousand dollars; but nothing herein contained shall be construed to invalidate the agency of any company incorporated in another state, by reason of such company having from time to time exchanged the securities so deposited with the auditor, controller, or chief financial officer of the state in which such company is located for other stock or securities authorized by this chapter, or by reason of such company having drawn its interest and dividends from time to time for such stocks and securities.

Must appoint agent upon whom legal process can be served.
Same, § 5.

SEC. 1165. Such company shall also appoint an attorney or agent in each county in this state, in which the company has an agency, on whom process of law can be served, and such company shall file with the auditor of state a certified copy of the charter or articles of incorporation of said company, and also a certified copy of the certificate of appointment of such agent, or agents, which appointment shall continue until another agent or attorney be substituted. And in case any such insurance corporation shall cease to transact business in this state according to the laws thereof, the agents last designated, or acting as such for such corporation, shall be deemed to continue agents for such corporation for the purpose of serving process for commencing actions upon

any policy or liability issued or contracted while such corporation transacted business in this state; and service of such process for the causes aforesaid upon any such agent, shall be deemed a valid personal service upon such corporation, and such company shall also file a statement of its condition and affairs in the office of the auditor of state, in the same form and manner required for the annual statements of similar companies organized under the laws of this state.

SEC. 1166. No agent shall act for any company referred to in the foregoing section, directly or indirectly, in taking risks, collecting premiums, or in any manner transacting the business of life insurance in this state without procuring from said auditor a certificate of authority, stating that the foregoing requirements have been complied with, and setting forth the name of the attorney for each company, a certified copy of which certificate shall be filed in the county recorder's office of the county where the agency is to be established, and shall be the authority of such company and agent to commence business in this state, and such company, or its agent or attorney, shall, annually, by the first day of April, file with the auditor of state a statement of its affairs for the year terminating on the 31st day of December preceding, in the same manner and form provided for similar companies organized in this state.

[Substitute for the original section ; 15th G. A., ch. 2, § 1.]

ANNUAL STATEMENT.

SEC. 1167. The president, or vice-president, and secretary or actuary, or a majority of the trustees or directors of each company organized under this chapter, shall, annually, on the first day of January, or within thirty days thereafter, prepare, under oath, and deposit in the office of the auditor of state, a statement showing :—

FIRST—NAME AND CAPITAL.

- | | |
|---|----------|
| 1. The name of the company and where located; | Name. |
| 2. The name of the officers; | |
| 3. The amount of capital stock; | Capital. |
| 4. The amount of capital stock paid in. | |

SECOND—ASSETS.

- | | |
|--|-------------------|
| 1. The value of real estate owned by such company; | Real estate. |
| 2. The amount of cash on hand; | Cash. |
| 3. The amount of cash deposited in bank, giving name of bank or banks; | |
| 4. The amount of cash in the hands of agents, and in the course of transmission; | |
| 5. The amount of bank stocks, with the name of each bank, giving par and market value of the same; | Bank stock. |
| 6. The amount of stocks and bonds of the United States, and all other bonds, giving names and amounts, with the par and market value of each kind; | Stocks and bonds. |

- | | |
|----------------|---|
| Mortgages. | 7. The amount of loans secured by first mortgage on real estate; |
| Other loans. | 8. The amount of all other bonds and loans, and how secured, with the rate of interest; |
| Premium notes. | 9. The amount of premium notes on policies in force; |
| Other notes. | 10. The amount of notes given for unpaid stock, and how secured; |
| Assessments. | 11. The amount of assessments unpaid on stock or premium notes; |
| Interest. | 12. The amount of interest due and unpaid; |
| Securities. | 13. All other securities. |

THIRD—LIABILITIES.

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|-------------------|--|
| Losses. | 1. The amount of losses due and unpaid; |
| | 2. The amount of losses adjusted but not due; |
| | 3. The amount of losses unadjusted; |
| Money borrowed. | 4. The amount of claims for losses resisted; |
| Dividends unpaid. | 5. The amount of money or evidences of investment borrowed; |
| Reinsurance. | 6. The amount of dividends unpaid; |
| Other sources. | 7. The amount required to safely reinsure all outstanding risks; |
| | 8. All other claims against the company. |

FOURTH—INCOME DURING THE YEAR.

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|----------------|--|
| Premiums. | 1. The amount of net cash premiums received; |
| Notes. | 2. The amount of premium notes received; |
| Interest. | 3. The amount of interest received from all sources; |
| Other sources. | 4. The amount received from all other sources. |

FIFTH—EXPENDITURES DURING THE YEAR.

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|-----------------|--|
| Losses. | 1. The amount paid for losses; |
| Dividends. | 2. The amount of dividends paid to policy-holders, and amount to stockholders; |
| To agents. | 3. The amount of commissions and salaries paid to agents; |
| To officers. | 4. The amount paid to officers for salaries and other perquisites; |
| Taxes. | 5. The amount paid for taxes; |
| Other payments. | 6. The amount of all other payments and expenditures. |

SIXTH—MISCELLANEOUS.

- | | |
|--------------------|---|
| Maximum insurance. | 1. The greatest amount insured on any one life; |
| Amount deposited. | 2. The amount deposited in other states or territories as security for policy-holders therein, stating the amount in each state or territory; |
| Premiums received. | 3. The amount of premiums received in this state during the year; |
| Losses paid in. | 4. The amount paid for losses in this state during the year; |
| Policies issued. | 5. The whole number of policies issued during the year, with the amount of insurance effected thereby, and total amount of risk; |

6. All other items of information necessary to enable the auditor to correctly estimate the cash value of policies, or to judge of the correctness of the valuation thereof. Other items.

[As amended by 15th G. A., ch. 2, § 2.]

SEC. 1168. The auditor of state is authorized to amend the form of annual statement, and to propose such additional inquiries as he may think necessary to elicit a full exhibit of the standing of companies doing business in this state. Additional inquiries. Same, § 8.

SEC. 1169. As soon as practicable after the filing of said statement of any company organized or doing business under the laws of this state, in the office of the auditor of state, he shall proceed to ascertain the net cash value of each policy in force, upon the basis of American experience table of mortality, and four and a half per cent. interest, or actuary's combined experience table of mortality, with interest at four per cent.; but in case such valuation has been made in New York, or any other state, upon the basis above specified, a certificate of the auditor, controller, or chief financial officer of such state, shall be taken by the auditor of this state as sufficient evidence of the valuation of such policies, and of the amount so required for such reinsurance. For the purpose of making such valuations, when not already made as aforesaid, the auditor may employ a competent actuary to do the same who shall be paid by the company for which the service was rendered; but nothing herein shall prevent any company from making said valuation herein contemplated, which shall be received by the auditor upon such proof as he may determine.

Upon ascertaining the net cash value of policies in force in any company organized under the laws of this state, or doing business in this state, and which has not made the deposit required in section eleven hundred and sixty-four of this chapter, the auditor shall notify said company of the amount, and within thirty days after the date of such notification the officers of such company shall deposit with the auditor the amount of such ascertained valuation of all policies within this state (in the securities described in section eleven hundred and seventy-nine of this chapter). But no joint stock company organized under the laws of this state or doing business therein, shall be required to make such deposit until the cash value of the policies in force, as ascertained by the auditor, exceeds the amount deposited by said company under section eleven hundred and sixty-two hereof. Foreign companies doing business in this state are not required to make a deposit in this state, provided such deposit has been made in the state where located, or in any other state when they shall have complied with section eleven hundred and sixty-four of this chapter.

[As amended by 17th G. A., ch. 47.]

SEC. 1170. On receipt of the deposit and statement from any company as provided in the preceding sections, and the statement and evidence of investment according to law of foreign companies, which shall be renewed annually, the auditor shall issue a certificate setting forth the corporate name of the company; its principal office or agency in the state; that it has fully complied

Auditor of state shall ascertain value of each policy. Same, § 9. 14 G. A. ch. 106, § 3.

Evidence of valuation of policy.

Company shall be notified of net cash value of policies.

Foreign companies.

Company's annual certificate. 12 G. A. ch. 173, § 10.

Expiration of same.

Penalty for failure to make deposit or statement: home companies:
Same § 11.

Foreign companies.

When insolvent to procure injunction: certificates from other states received.
Same § 12.
14 G. A. ch. 106,
§ 1.

When securities vest in state for benefit of insured.
12 G. A. ch. 173,
§ 13.

with the laws of this state in relation to life insurance companies, and is authorized to transact the business of life insurance for twelve months from the date of such certificate, or until the expiration of the thirty days' notice given by the auditor of the next annual valuation of its policies, said certificate to expire on the first day of April in the year following after it is issued.

[Substitute for the original section; 15th G. A., ch. 2, § 3.]

SEC. 1171. Upon the failure of any company organized in this state to make the deposit, or file the statement in the time stated herein, the auditor shall notify the attorney-general of the default, who shall at once apply to the district or circuit court if in session, or, if in vacation, to any judge thereof, for an order requiring said company to show cause why its business shall not be closed; and, if upon hearing, the company shall fail to show sufficient cause for neglecting to make the deposit, or file the statement required by this chapter, then the court shall decree its dissolution. Companies organized and chartered by the laws of any foreign state or country, failing to file the evidence of deposit and the statement within the time stated herein, shall be subject to the penalties prescribed in section one thousand one hundred and seventy-seven.

[Substitute for the original section; 15th G. A., ch. 2, § 4.]

EXAMINATION BY AUDITOR.

SEC. 1172. The auditor may at any time make a personal examination of the books, papers, and securities of any life insurance company doing business in this state, or may authorize or empower any other suitable person to make such examination, and for the purpose of securing a full and true exhibit of its affairs, he, or the person selected by him to make such examination, shall have power to examine, under oath, any officer or agent of said company, or others if necessary, relative to its business and management. If, upon such examination, the auditor is of opinion that the company is insolvent, or that its condition is such as to render its further proceedings hazardous to the public or to the holders of its policies, he shall communicate the facts to the attorney-general, who shall at once apply to a judge of the supreme or district court to issue an injunction, restraining such company from transacting further business, except the payment of losses already ascertained and due, until a full hearing can be had. It shall be discretionary with the judge, either to issue the injunction forthwith or to give notice to the company, and cause a hearing to be had as in ordinary proceedings for an injunction. Upon the final hearing of the cause, he may dissolve or modify the injunction, or make it perpetual, and, if made perpetual, shall also decree what disposition shall be made of the deposit of the company in the hands of the auditor, subject to the provisions of the following section.

SEC. 1173. The securities of a defaulting or insolvent company, on deposit with the auditor of state, shall vest in the state for the benefit of the policies on which such deposits were made, and the proceeds of the same shall, upon the order of the court, be divided

among the holders of said policies in the proportions of the last annual valuation of the same, or applied to the purchase of re-insurance for the benefit of the policy-holders.

SEC. 1174. Companies shall have the right at any time to change their securities on deposit, by substituting for those withdrawn a like amount in other securities of the character provided for in this chapter, and whenever the annual valuation of policies outstanding and in force against any company, is less than the amount of security then on deposit with the auditor, said company shall have the right to withdraw such excess; but twenty-five thousand dollars shall remain on deposit.

SEC. 1175. The auditor shall permit companies, having on deposit with him stock or bonds as security, to collect the interest accruing on such deposits, delivering to their authorized agents, respectively, the coupons or other evidences of interest as the same become due, but upon default by any company to deposit additional security as called for by the auditor, or pending any proceedings to close up or enjoin it, he shall collect the interest as it becomes due, and add the same to the securities in his hands belonging to such company.

SEC. 1176. At the earliest practicable date after the returns are received from the several insurance companies, the auditor shall make a report to the general assembly, of the general conduct and condition of the corporations visited by him since his last annual report, and shall include therein an aggregate of the calculated value of all outstanding policies of life insurance, and in connection therewith, shall prepare an abstract of all the returns and statements made to him by insurance companies and agents.

SEC. 1177. Any company doing business in this state without the certificate required by section eleven hundred and seventy of this chapter, shall forfeit one hundred dollars for every day's neglect to procure said certificate. Any agent making insurance, or soliciting applications for any company having no certificate from the auditor, shall forfeit the sum of three hundred dollars, and any person acting for a company authorized to transact business in this state, without having the certificate prescribed in section eleven hundred and sixty-six, issued by the auditor of state, in his possession, shall be liable to pay twenty-five dollars for each day's neglect to procure such certificate.

[The original repealed, with the proviso that sub-division 1 of § 45 of the code shall not apply to such repeal, and the foregoing substituted; 15th G. A., ch. 2, § 5.]

SEC. 1178. Suits brought to recover any of the penalties provided for in this chapter shall be instituted in the name of the state of Iowa by the district attorney of the district, under the direction and by the authority of the auditor of state, and may be brought in the district or circuit court of any county in which the company proceeded against is engaged in the transaction of business, or in which the agent resides, in cases in which the proceeding is against the agent individually. Said penalties when recovered shall be paid into the state treasury for the use of the school-fund.

[Original repealed and foregoing substituted, with same proviso as last preceding section; *Ibid*, § 6.]

Change of securities.
Same, § 14.

Interest collected.
Same, § 15.

Auditor's report.
Same, § 16.

Penalty for doing business without certificate: company; agent.
Same, § 17.

Recovery of penalties.
Same, § 21.

To be paid into state treasury.

Investment of funds. **Same, § 22.** SEC. 1179. No company organized under the provisions of this chapter shall invest its funds in any other manner than as follows:

In the stocks of United States.

In the stocks of this state or any other state, if at or above par.

In bonds and mortgages on unincumbered real estate within this state, or in the state in which such company is located, worth at least twice the amount loaned thereon, exclusive of improvements.

In the bonds of any county, incorporated city, town, or independent school district, within this state, where such bonds are issued by authority of law, and are approved by the executive council.

In loans upon its own policies, provided that the amount so loaned shall not exceed one-half of the reserve against said policy, as provided in this chapter, at the time such loan is made, and that all policies upon which loans are made shall have been issued and in force at least five years.

All stocks, bonds, or mortgages, owned or held by any company doing business under the provisions of this chapter, whether organized under the laws of this state or not, shall be equal or made to be equal to six per cent. stocks.

[As amended by 17th G. A., ch. 47.]

Real estate **Same, § 23.** SEC. 1180. No company organized under this chapter, shall be permitted to purchase, hold, or convey real estate, except for the purposes and in the manner herein set forth:

When requisito for business. 1. Such as shall be requisite for its immediate accommodation in the transaction of its business; or,

when mortgaged as security to. 2. Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted, or for moneys due; or,

3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings; or,

4. Such as shall have been purchased at sales upon judgments, decrees, or mortgages obtained or made for such debts; and no company incorporated as aforesaid, shall purchase, hold, or convey real estate in any other case, or for any other purpose.

When to be sold. **Same, § 24.** SEC. 1181. All such real estate as may be acquired as aforesaid, and which shall not be necessary for the accommodation of such company in the convenient transaction of its business, shall be sold and disposed of within five years after such company shall have acquired title to the same; no such company shall hold such real estate for a longer period than that above mentioned, unless the said company shall procure a certificate from the auditor of state, that the interests of the company will suffer materially by a forced sale of such real estate, in which event the time for the sale may be extended to such time as the said auditor shall direct in said certificate.

Policy exempt from execution. **Same, § 18.** SEC. 1182. A policy of insurance on the life of an individual, in the absence of an agreement or assignment to the contrary, shall inure to the separate use of the husband or wife and children of said individual, independently of his or her creditors; and an endowment policy, payable to the assured on attaining a certain age, shall be exempt from liability for any of his or her debts.

Where a decedent left a wife, but no children, held, that this section must be construed in the light of the provisions of § 2:72, which was previously in force, and that the proceeds of the policy should go to the wife alone, and not be divided among all the distributees : *Rhode v. Bank,*

52-75.

The proceeds of the policy, when realized by the person entitled thereto, are not exempt from execution for the debts of such person. The exemption exists only as to the debts of the person insured: *Smedley v. Felt*, 43-607.

SEC. 1183. Each company contemplated in this chapter shall pay the same fees, and be liable to the same obligations as provided in sections eleven hundred and fifty-three, and eleven hundred and fifty-four of chapter four of this title.

Fees.
Same, §§ 19, 20,
14 G. A. ch. 106.
§§ 4, 5.

DEFENSES TO ACTIONS ON POLICIES.

[Sixteenth General Assembly, Chapter 55.]

SEC. 1. In all suits now or hereafter pending in any court of this state on policies of life insurance, wherein the defendant seeks to avoid liability upon the alleged ground of the intemperate habits or habitual intoxication of the assured, it shall be a sufficient reply for the plaintiff to show that such habits or habitual intoxication of the assured was generally known in the community or neighborhood where the agent of the defendant resided or did business, if thereafter the company continued to receive the premiums falling due on such policy.

SEC. 2. In any case where the medical examiner, or physician acting as such, of any life insurance company doing business in this state, shall issue a certificate of health or declare the applicant a fit subject for insurance under the rules and regulations of such company, the company shall be thereby estopped from setting up in defense of suit on such policy, that the assured was not in the condition of health required by the policy, at the time of the issuing of such policy, except where the same is procured by or through the fraud or deceit of the assured.

SEC. 3. In all cases where it shall appear that the age of the person insured has been misstated in the proposal, declaration or other instrument upon which any policy of life insurance has been founded or issued, then and in such case, the person or company issuing such policy, shall upon the discovery of such misstatement be permitted to demand and collect the difference of premium, if any, which would be due and payable on account of the true age of the assured, from year to year, according to the rate of premium of such person or company, upon which such policy was issued; or such person or company so issuing the policy may alter the decease of the assured deduct from the amount payable by such policy, the difference of premium, if any, which would so have been payable from year to year, by reason of any difference of age at time of issuance of such policy; and no other defense or deduction by such person or company issuing such policy, shall be permitted after the death of the person assured, on account of such misstatement of age of [the]assured, notwithstanding any warranty of such statement of age by terms of policy or otherwise, except when it be shown by the person or company insuring that the policy was procured by fraud in fact.

If age of as-

sured has
been misstated;

Company
may collect
the difference
of premium;

Or, may de-
duct after
death of as-
sured.

But no other
deduction to
be made un-
less fraud
shown.

CHAPTER 6.

OF MUTUAL BUILDING ASSOCIATIONS.

SECTION 1184. Any number of persons, not less than five, may associate themselves and become incorporated as provided in chapter one of this title, for the purpose of raising moneys to be loaned to the members of the corporation, and to other persons, and for use in buying lots or houses, or in building or repairing houses or other purposes.

Sec. 1185. Such corporation shall be authorized and empowered to levy, assess, and collect from its members such sums of money, by rates of stated dues, fines, interest on loans advanced, and premiums bid by members for the right of precedence in taking loans, as the corporation by its by-laws shall adopt; also to acquire, hold, encumber, and convey all such real estate and personal property as may be legitimately pledged to it on such loans, or may otherwise be transferred to it in due course of its business; and the dues, fines, and premiums so paid by members, in addition to the legal rate of interest on loans taken by them, shall not be construed to make the loans so taken usurious; but no person shall hold more than twenty shares in any such association.

Sec. 1186. When mutual loan societies, or other associations heretofore organized under the laws of this state, with objects similar to those contemplated in the preceding sections, and permitting not more than twenty shares of their stock to be owned by any one member, have loaned, or shall hereafter loan, their capital or funds, or any part thereof, to their members, and have taken, or shall take, notes or obligations therefor, secured by mortgages, or otherwise, in accordance with the terms of their articles of incorporation and by-laws, such notes, obligations, and securities shall not be construed or held to be usurious by reason of any dues, fines, or premiums for the right of preference in taking such loans paid in addition to the legal rate of interest, but the same shall be valid and binding in all respects, the payment of such dues, fines, or premiums in addition to a rate of interest not exceeding ten per centum per annum, payable annually, or at any less period, notwithstanding.

This and the preceding section do not authorize the taking of interest upon the premium bid for the loan. If the interest charged is more than ten per cent. *per annum* upon the amount *actually loaned*, the contract is usurious: *Hawkeye Benefit & Loan Ass'n v. Blackburn*, 48-385.

Sec. 1187. So much of the earnings of such corporations as may be necessary, not exceeding ten per cent. per annum, may be set apart to defray the current expenses of said association, and for the purchase of such real estate as may be necessary for the convenient transaction of its business, and the residue of said earnings shall be transferred to the credit of the shareholders, and when said shares are fully paid, then to be paid ratably to the shareholders.

[As to the taxation of such associations, see 16th G. A., ch. 163, inserted following § 813]

Earnings to
pay expenses
and purchase
real estate.
14 G. A. ch. 80,
§ 4.

SAVINGS BANKS.

[Fifteenth General Assembly, Chapter 60.]

SEC. 1. Corporations to be known as savings banks may be formed, under and in accordance with the provisions of this act, for the purpose of receiving on deposit the savings and funds of others, and preserving and safely investing the same, and paying interest or dividends thereon; and such corporations, and the stockholders thereof, shall be subject to all the conditions and liabilities herein imposed; and hereafter no association shall be formed under the general incorporation acts for the purpose of transacting such banking business; and all corporations now organized thereunder and doing business as savings banks, shall, on or before the first day of July, A. D. 1875, conform to and reorganize under the provisions of this act, as hereinafter provided, and any failure or neglect of the proper officers of such association to comply with the provisions of this act, shall be regarded as a forfeiture of all rights and privileges of such associations.

SEC. 2. It shall be lawful for any number of persons, not less than five, to organize savings banks under the provisions of this act, with a paid-up capital stock of not less than ten thousand dollars in cities and towns of ten thousand inhabitants, or under; and a paid-up capital stock of not less than fifty thousand dollars in cities of over ten thousand inhabitants; which said corporations shall be known as savings banks, and shall have power to transact the usual business of such institutions, but not to issue bank notes to circulate as money; but no such association shall have the right to commence business until its officers elect, or its shareholders, shall have furnished to the auditor of state a sworn statement of the paid-up capital, and, when the auditor of state is satisfied as to the fact, he shall issue to such association a certificate authorizing it to commence business, a copy of which shall be published in some newspaper printed in the county where such association is located for four consecutive weeks, at the expense of such association. If the auditor of state should deem it necessary before issuing a certificate, he may make a personal examination of capital stock, or cause one to be made by some competent person appointed by him, the expense of which shall be paid by the association.

SEC. 3. Any five or more persons of full age, a majority of whom shall be citizens of this state, who may desire to form an incorporated company for the purposes hereinbefore specified, shall make, sign and acknowledge, before some officer competent to take acknowledgments of deeds, and file in the office of the recorder of the county wherein the principal place of business of the company is intended to be located, and a certified copy thereof in the office of the secretary of state, articles of incorporation, in which shall be stated, the corporate name of the corporation; the object for which the corporation shall be formed; the amount of its capital stock; the time of its existence not to exceed fifty years; the number of its directors or trustees, and their names, who shall manage the affairs of the association for the first year; and the name of the city, or town, and county in which the principal place

May be formed.
Not to be formed under general incorporation laws.

Existing banks to conform.

Organization.
Amount of capital.

Auditor's certificate.

Auditor may examine.

Articles of incorporation.

Filed.

- Notice.** of business of the company is to be located; and a notice must be published in some newspaper published in the county wherein said bank is located for four consecutive weeks, stating the substance of the above requirements.
- Certified copy evidence.** SEC. 4. A copy of any articles of incorporation, filed in pursuance of this act and certified to by the recorder of the county in which it is filed, or by the secretary of state, shall be received in all courts, and in all actions and proceedings, as presumptive evidence of the facts therein stated.
- Enumeration of powers.** SEC. 5. When the certificate of the auditor shall have been received, and the articles of incorporation shall have been filed and recorded, and publication shall have been made as hereinbefore provided, the persons who shall have signed and acknowledged the same, and such persons as thereafter become their associates, or successors, shall be a body politic and corporate, and by their corporate names shall have succession for the period limited, and power:
- First. To sue and to be sued in any court;
 - Second. To make and use a common seal, and to alter the same at pleasure;
 - Third. To purchase, hold, sell, convey, and release from trust or mortgage, such real and personal estate as hereinafter provided for in this act;
 - Fourth. To appoint such officers, agents, and servants, as the business of the corporation shall require, to define their powers, prescribe their duties, and fix their compensation, and to require of them such security as may be thought proper for the fulfillment of their duties;
 - Fifth. To loan and invest the funds of the corporation; to receive deposits of money, and to loan and invest the same as hereinafter provided, and to repay such deposits without interest, or with such interest as the by-laws of the constitution may provide;
 - Sixth. To make by-laws, not inconsistent with the laws of this state, for the organization of the company, and the management of its property, the regulation of its affairs, the condition on which deposits will be received, the time and manner of dividing the profits and of paying interest on deposits, and for carrying on all kinds of business within the objects and purposes of the company.
- Management.** SEC. 6. The business and property of such savings banks shall be managed by a board of directors or trustees, of no less than five nor more than nine, all of whom shall be shareholders and citizens of this state, the first board to be designated in the articles of incorporation; and who shall organize by taking an oath, diligently, faithfully, and impartially to perform the duties imposed upon them by this act, and not knowingly to violate, or willingly to permit to be violated, any of the provisions thereof; that said directors or trustees are the bona fide owners in their own right of the stock standing in their respective names on the books of the bank; and that the same are not hypothecated, or in any manner pledged as security for any loan obtained, or debt owing to said savings bank; a certificate of which oath, signed by each director, and certified to by the officers before whom it was taken,
- Directors or trustees to take oath.**

shall be filed and preserved in the office of the auditor of state. Oath to be filed with auditor of state. The call for the first meeting of directors or trustees shall be signed by one or more persons named as directors or trustees in First meeting of board. the certificate, setting forth the time and place of meeting, which notice shall be delivered personally to each director, or published at least ten days in some newspaper published in the county in which is the principal place of business of the corporation, or, if no newspaper is published in the county, then in a newspaper nearest thereto. At their first meeting, and as often thereafter as their by-laws shall require, the directors or trustees shall elect, from their number, a president and one or more vice presidents Officers. for the ensuing year; and shall appoint a treasurer or cashier, and such other subordinate officers, agents, and servants as may be required, who shall hold their offices at the pleasure of the board, and who shall give such security for the faithful performance of their duties as may be required by the by-laws. All vacancies in Vacancies in board. the board of directors or trustees shall be filled, at the next regular meeting after such vacancy shall arise, from among the stockholders, and the person receiving a majority of the votes of the whole number of directors or trustees shall be duly elected. The directors or trustees, to hold office after the expiration of the term of those named in the certificate of incorporation, shall be annually Annual elec- tions. elected at such time and place, and in such mode, and upon such notice as shall be provided by the by-laws of the company, and shall hold office for one year, or until their successors are elected and qualified. All such elections shall be by ballot, and each stockholder shall be entitled to one vote for every share of stock held by him, and the persons so receiving the greater number of votes, shall be directors of [or] trustees. Shareholders may vote Right to vote. by proxy duly authorized, and no shareholder shall be entitled to vote whose liability to said bank is past due and unpaid. If it Deferred elec- should happen at any time that an election of directors or trustees tion. shall not be had on the day designated in the by-laws of the company, it shall be lawful on any other day to hold such election, after giving due notice, and the directors or trustees shall be continued in office until their successors are elected and qualified. A majority of the directors or trustees shall constitute a quorum of Quorum. said board for the transaction of business, but said bank may provide in the by-laws that a smaller number, not less than five, one of whom shall be the president and [or] vice-president, shall constitute a quorum, which number shall thereupon be authorized to transact business.

SEC. 7. All savings banks organized under this act may receive, on deposit, all such sums of money as shall from time to time be offered by tradesmen, merchants, laborers, servants, minors, and others. All such banks with a paid up capital of Deposits. ten thousand dollars may receive deposits to the amount of one hundred thousand dollars; those with a paid-up capital of twenty-five thousand dollars may receive deposits to the amount of two hundred and fifty thousand dollars; those with a paid-up capital of fifty thousand dollars, deposits to the amount of five hundred thousand; those with a paid up capital of one hundred thousand dollars, deposits to the amount of one million dollars; and no greater amount of deposits shall be received without a Limita.

Repayment of deposits.

like proportionate increase of cash capital, *and* which capital shall be regarded a guarantee fund for the better security of depositors, and so invested in some safe and available securities. The deposits so received for the purpose of safe keeping, and invested as provided in this act, shall be paid to such depositor or his or her representatives when requested at such time or times, and with such interest, and under such regulations as the board of directors or trustees shall from time to time prescribe, not inconsistent with the provisions of this act; which regulations shall be printed and conspicuously exposed in some place, accessible and visible to all, in the business office of said bank, and no alteration, which may at any time be made in such rules or regulations, shall in any manner effect the rights of depositors in respect to deposits, or the interest thereon, made previous to such alteration. It shall be lawful for savings banks to require sixty days' written notice of the withdrawal of any deposits, but when there are sufficient funds on hand the officers of the bank may in their discretion waive this requirement.

May require notice.

It shall be lawful for savings banks to close any accounts upon written notice, as may be provided for in the by-laws, to a depositor to withdraw his deposit, after which notice it shall cease to draw interest; *provided*, nothing in this act shall be so construed as to prevent such banks in their discretion from issuing certificates of deposits, payable on demand.

Accounts closed by limitation.

SEC. 8. All accounts upon which no deposit or drafts shall be made for a period of ten years in succession shall be so far closed that neither the sum deposited, nor the interest that shall have accrued thereon, shall be entitled to any interest after the expiration of the ten years from the date of the last deposit or draft. This provision, however, shall not apply to endowments for children, to trust estates, nor to other cases where special provision is made therefor at the time of the deposit thereof.

Application.

SEC. 9. It shall be lawful for the directors or trustees of any such savings bank to invest the funds or capital belonging to said bank, and all moneys deposited therein, and all the gains and profits thereof, only as follows, to wit:

First. In the stocks or bonds, or interest-bearing notes or certificates, of the United States.

Second. In the stocks or bonds, or evidences of debt bearing interest, of this state.

Third. In the stocks, bonds, or warrants of any city, town, county, village, or school-district of this state, issued pursuant to the authority of any law of this state, but not exceeding twenty-five per cent. of the assets of the bank shall consist of town, village, or school-district bonds or warrants.

Fourth. In notes or bonds secured by mortgage or deed of trust upon unincumbered real estate in this state, worth at least twice the amount loaned thereon.

Fifth. It shall be lawful for said banks to discount, purchase, sell, and make loans upon commercial paper, notes, bills of exchange, drafts or any other personal or public security; but said bank shall not purchase, hold, or make loans upon the shares of its capital stock.

Sixth. In all cases of loans upon real estate, all the expenses of searches, examinations, and certificates of title, or the inspection of property, appraisals of value, and of drawing, perfecting, and recording papers, shall be paid by such borrowers. Wherever buildings are included in the valuation of any real estate upon which a loan shall be made by said bank, they shall be insured by the mortgagor, for the benefit of the bank for at least two-thirds their value, in some reliable company, and the policy of insurance shall be duly assigned to the bank; and it shall be lawful for said bank to renew such policy of insurance from year to year, in case the mortgagor neglects to do so, and *may* charge the same to him. All the necessary charges and expenses paid by said bank for such renewals shall be paid by such mortgagor to the said bank, and shall be a lien upon the property so mortgaged until paid.

SEC. 10. It shall be lawful for savings banks to purchase, hold, and convey real estate only as follows, *to-wit:*—

First. The lot and building in which the business of the bank may be carried on.

Second. Such *as* shall have been purchased at sales upon foreclosure of mortgages owned by the bank, or upon judgment or decrees obtained or rendered for debts due it; and all such real estate as is described in this clause shall be sold by said bank within ten years after the title of the same shall be vested in it by purchases or otherwise.

SEC. 11. It shall be the duty of the board of directors or trustees, from time to time, to regulate the rate of interest or dividends to be allowed to depositors, and to pay the same upon the presentation of the deposit-book or certificates; and after the payment of, or setting aside a sufficient amount to pay, the interest to depositors of said banks, and after deducting the necessary expenses of said banks, the board of directors or trustees may make from the surplus profits in hand in cash such dividends on the capital stock as in their discretion may seem best and proper.

SEC. 12. The capital stock of all banks organized under this act shall be divided into shares of one hundred dollars each, and shall be deemed personal property, and shall be transferable on the books of the banks in such manner as shall be prescribed by the by-laws. No certificate representing shares of stocks shall be issued (nor shall such stock be considered as *re[ac]quired*) until the whole sum of money which such certificate purports to represent shall have been paid into the corporation. Shareholders in banks organized under the provisions of this act shall be individually and severally liable to the creditors of the corporation of which they are shareholders, over and above the amount of stock by them held, to an amount equal to their respective shares so held, for all its liabilities accruing while they remained shareholders, and no transfer of stock shall affect such liability for the period of six months thereafter; and should any such bank become insolvent, and its assets be found insufficient to pay its debts and liabilities, its shareholders may, to that extent, be compelled to pay such deficiency, in proportion to the amount of stock owned by each.

*Loans upon
real estate.*

*When to be
sold.*

*Interest on
deposits.*

Dividends

*Certificates of
stock to be
full paid.*

*Liability of
shareholders.*

**Stock held by
executor,
guardian, &c.:
by married
women.**

**Other associa-
tions having
deposits or
holding stock.**

**Deposits by
executors,
&c.;
By minors;**

**By married
women.**

**Not to issue
circulating
notes nor to
contract
debts, except,
&c.**

**Security to
depositors.**

**Directors not
to be paid.**

**Use of funds by
officers re-
stricted.**

Pay of officers.

**Limit of lia-
bilities to the
bank.**

Proviso.

SEC. 13. Whenever any stock is held by any person as executor, administrator, trustee, or guardian, he may represent such stock, in person or by proxy, and any married woman holding stock in her own name, in any bank organized under this act, may cast her vote or appoint her own proxy to vote for her.

SEC. 14. Any person authorized thereto, by resolution of the board of directors or trustees of any corporation, association, or society, having funds deposited, or owning stock, in any bank formed under this act, shall be entitled to receive such deposit or to transfer such stock, and to cast the vote of such corporation, association, or society thereon.

SEC. 15. Whenever any deposits are held by any person or [as] executor, administrator, trustee, or guardian, he shall be entitled to receive the same; and whenever any deposit shall be made by any minor the directors or trustees shall pay to such depositor such sum as may be due to him or her, although no guardian shall have been appointed by or for such minor, or the guardian of such minor shall not have authorized the drawing of the same; and the check, receipt, or acquittance of such minor shall be as valid as if the same was executed by a guardian of said minor, or said minor was of full age, if such deposit was made personally by said minor; and whenever any deposit shall be made in her own name by any woman being or thereafter becoming married, said director [s] or trustees shall pay such sum as may be due to her on her receipt or acquittance.

SEC. 16. No bank organized under this act shall, by implication or construction, be deemed to possess the power of creating and issuing bills, notes, or other evidences of debt for circulation as money; nor shall it be lawful for such bank, or the directors or trustees thereof, to contract any debt or liability against the bank, for any purpose whatever, except for deposits and the necessary expenses of management and transacting its business; and the capital stock and the assets of the bank shall be security to depositors.

SEC. 17. No director or trustee of a saving[s] bank, shall, as such, receive any pay or emolument for his services; and no trustee, officer, or servant of such savings bank shall, directly or indirectly, in any manner, use the funds of the said bank, or its deposits, or any part thereof, except for regular business transactions, and all loans made to said trustees, officers, servants, and agents of the bank shall be upon the same security [as] required of others, and in strict conformity to the rules and regulations of the bank; and all such loans shall be made only by the board, and shall be acted upon in the absence of the party applying therefor; but such reasonable compensation may be paid to the officers of the bank as may from time to time be fixed in the by-laws.

SEC. 18. The total liabilities to any association of any person, or of any company, corporation, or firm, for money borrowed, including in the liabilities of a company or firm the liabilities of the several members thereof, shall at no time exceed twenty per cent. of capital stock actually paid in; provided, that the discount of bona fide bills of exchange drawn against actually existing value and the discount of commercial or business paper actually owned by the person or persons, corporation, or firm negotiating the same shall not be considered money borrowed.

SEC. 19. The misnomer of any such savings bank, in any instrument, shall not vitiate or impair the same if it be sufficiently described to ascertain the intention of the parties. *Misnomer.*

SEC. 20. It shall not be lawful for any bank, banking association, or private bankers, to advertise or put forth a sign as a savings bank or savings institution; and any bank, banking association, or private banker, violating these provisions, shall forfeit and pay, for every such offense, the sum of one hundred dollars for every day such offense shall be continued, to be sued for, and recovered in the name of the people of the state, in any court having cognizance thereof, for the use of the school-fund. *Unauthorized use of the term "savings bank" prohibited.*

SEC. 21. Any person or persons who shall put up or cause to be put up or exhibited any sign, or who shall issue or circulate any card, circular, or advertisement purporting to be a savings bank not being organized under this act shall, on conviction thereof, be adjudged guilty of misdemeanor, and be punished by a fine not exceeding fifty dollars for each offense or for each day such offense shall be continued.

SEC. 22. All associations organized under the general incorporation laws of this state, for the purpose of transacting a banking business, buying, selling, exchange, receiving deposits, discounting notes, etc., shall make a full, clear, and accurate statement of the condition of the association as hereinafter provided, which shall be verified by the oath of the president or vice-president or cashier and two of the directors, which statement shall contain:—

*Code: § 1570.
Banking associations to make quarterly statements.*

First. The amount of capital stock actually paid in.

Second. The amount of debts of every kind due to banks, bankers, or other persons other than regular deposits. *What to specify.*

Third. The total amount due depositors including sight and time deposits.

Fourth. The amount subject to be drawn at sight then remaining on deposit with solvent banks or bankers of the country, specifying each city and town and the amount deposited in each and belonging to such association.

Fifth. The amount of gold and silver coin and bullion belonging to such association at the time of making statement.

Sixth. The amount then on hand of bills of solvent banks.

Seventh. The amount of bills, bonds, and other evidences of debt, discounted or purchased by such association, and then belonging to the same, specifying particularly the amount of suspended debts, the amount considered good, the amount considered doubtful, and the amount in suit or judgment.

Eighth. The value of real or personal property held for the convenience of such association, specifying the amount of each.

Ninth. The amount of undivided profits if any then on hands.

Tenth. The total amount of all liabilities to such association on the part of the directors thereof:

Which statement shall be forthwith transmitted to the auditor of state and be by him filed in his office.

SEC. 23. The auditor of state shall, at any time he may see proper, make, or cause to be made, an examination of any association, as here[in]after provided contemplated in this chapter, or he shall call upon any such association for a report of its state and condition as hereinbefore provided, upon any given day which has

*Auditor to examine association:
To call for report four times a year.*

Same to be published.

passed, as often as four times in a year, and which report the auditor shall cause to be published for one day in some daily newspaper published in the county where such association shall be located, or, if there be no such newspaper published in said county, then such report shall be published in some weekly newspaper printed in said county for one week, and the expenses of such publication shall be paid by such institution.

Auditor to report to general assembly, with recommendations.

SEC. 24. It shall be the duty of the auditor of state to communicate to the legislature, at each session, a statement of the condition of every savings bank, from which reports have been received for the preceding year, and to suggest any amendments in the law relative to savings banks which in his judgment may be necessary or proper to increase the security of depositors.

Duty of auditor where bank is violating laws, or doing unsafe business.

SEC. 25. Whenever it shall appear to the auditor that any savings bank has been guilty of violating this act or the law, or is conducting its business in an unsafe manner, he shall, by an order under his hand and seal of office, addressed to the institution so offending, direct discontinuance of such illegal and unsafe practices, and he shall demand a conformity with the requirements of this act, and whenever any such savings bank shall refuse or neglect to comply with such order, he shall communicate the fact to the attorney-general of the state, whose duty it shall be to institute proceedings against such savings banks as are now, or may be hereafter, authorized in law in cases of insolvent corporations.

Duty of attorney general.

The auditor of state may appoint, and the person or persons who may be appointed by him, to examine the affairs of any savings banks, shall have power to administer oaths to any person whose testimony may be required on any such examination, and to compel the appearance and attendance of any such person, for the purpose of such examination, by summons, subpoena, or attachment, in the manner now authorized in respect to the attendance of persons as witnesses in the courts of this state, and all books and papers which it may be deemed necessary to examine by the auditor, on the examination so appointed, shall be produced, and their production may be compelled in like manner. The expenses of any examination, made in pursuance of this act, shall be paid by the savings banks so examined, in such amount as the auditor shall certify to be just and reasonable.

Penalty for false statements, false entries, exhibits, and reports.

SEC. 26. Every officer, agent, or clerk of any savings bank organized under this act, who shall willfully and knowingly subscribe or make any false statement or false entries in the books of such bank, or shall knowingly subscribe or exhibit false papers with the intent to deceive any person authorized to examine as to the condition of said institution, or shall willfully or knowingly subscribe or make false reports, shall be deemed guilty of felony, and upon conviction thereof shall be fined not exceeding ten thousand dollars, and be imprisoned in the state prison not less than two nor more than five years, and be forever after incapable of holding any office created by this act.

Intentional fraud punished.

SEC. 27. Intentional fraud on the part of savings banks organized under this act, or in deceiving the public or individuals in relation to their means or their liabilities, or diversion of the funds of the bank to other objects than those mentioned in its certificate of incorporation, and the payment of dividends which

leave insufficient funds to meet the liabilities of the bank, shall subject those guilty thereof to fine of not less than five hundred dollars, or imprisonment of not less than one year, or by both such fine and imprisonment at the discretion of the court, and shall cause a forfeiture of all the privileges herein conferred, and the court may proceed to close the bank by an information in the manner prescribed by law.

SEC. 28. The paid-up capital of all savings banks organized and doing business under this act shall be subject to the same rates of taxation and rules of valuation as other taxable property, by the revenue laws of the state, which taxes shall be levied on and paid by the banks and not the individual stockholders, and the general assembly shall never impose any greater tax upon property employed in banking under this act than is or may be imposed upon the property of individuals. The franchise of all such banks, the savings and funds deposited therein, and the mortgages and other securities, wherever the same are invested, are not to be taxed, but are expressly exempted therefrom, and may be omitted from assessments of the bank required by the revenue laws of this state.

SEC. 29. Whenever it is desired to increase the amount of capital stock of such banks, a meeting of stockholders may be called by a notice signed by the officers of said bank, and at least a majority of its directors, and published at least thirty days in every issue of some newspaper published in the county where the principal place of business of the bank is located, which notice shall specify the object of the meeting, the time and place when it is to be held, and the amount which it is proposed to increase the capital stock; and a vote of two-thirds of all the shares of stock of said bank shall be necessary to an increase of the amount of capital stock. If at any meeting so called a sufficient number of votes have been given in favor of increasing the amount of capital stock, a certificate of the proceedings, showing a compliance with these provisions, the amount of capital stock actually paid in, and the amount to which the capital stock is to be increased, and the manner of such increase, shall be made out, signed, and verified by the affidavit of the chairman and secretary of the meeting, certified by a majority of the directors or trustees, and filed and recorded as required by the third section of this act. When this is done, the capital stock of the bank shall be increased to the amount specified in the certificate.

SEC. 30. All savings banks organized under this act may be dissolved, prior to the period fixed upon in the certificate of incorporation, by the affirmative votes of stockholders holding three-fourths of the capital stock, at a meeting of stockholders to be called for this purpose in the manner and after publication of notice as required in the preceding section. In all cases of dissolution of a bank hereunder, or the commencement of proceedings under this act to close the same, the receiver or receivers appointed thereunder shall not be required or permitted by forced sale to sell the securities of said banks, but shall proceed as expeditiously as possible to collect the same and make distribution of proceeds to those entitled thereto.

Taxation of capital.

To be paid by bank.
No greater tax
to be imposed
on banking
property than
any other.

Exemption
from taxation.

Mode of in-
creasing capi-
tal stock.

Certificate.

Voluntary
dissolution.

Winding up.

Existing
banks may
reorganize.

Mode of re-
organization.

Prohibited
from adver-
tising more
capital than
is paid in.
Fine.

Repeal.

SEC. 31. Any bank or association existing under and by virtue of any law of this state may be reorganized under the provisions of this act, and when duly organized all securities, real estate, or property may be transferred to such new organization; but no such reorganization shall have the effect to discharge the original bank, its directors or stockholders, from any liability to its depositors or any other person; but the same shall continue until legally discharged, and such new organization or bank shall be legally liable to pay every claim or demand existing against the bank whose assets or property, or any part thereof, it has received by reason of such reorganization. All such banks may avail themselves of the provisions [of] and become incorporated under this act, by filing with the recorder of the county in which the principal place of business is located, and a certified copy thereof in the office of the secretary of state, a certificate stating their intention and election to become so incorporated thereunder, which election and intention may be made and declared by the directors or trustees of such bank or association, or a majority of them. The certificate stating such intention may be signed by the president and secretary of such corporation, association, or bank, and shall be acknowledged before some officer competent to take acknowledgments of deeds; and in all other respects existing banks and associations reorganizing hereunder shall comply with, and conform to, all the provisions and requirements of this act with reference to the original organization of savings banks, so far as the same may be applicable, and as soon thereafter as the auditor's certificate is received and published, as hereinbefore provided, may proceed to transact business.

SEC. 32. Any saving [s] bank organized under the provisions of this act is hereby prohibited from advertising in any way, either by publication or otherwise, any greater amount of capital than such banks *have* [has] actually paid in, and such bank shall be subject to a fine of twenty-five dollars for each and every violation of this section.

SEC. 33. All acts, and parts of acts in conflict with this act, are hereby declared to be inoperative so far as they affect this act.

TITLE X.

OF INTERNAL IMPROVEMENTS.

CHAPTER 1.

OF MILL DAMS AND RACES.

SECTION 1188. Any person who owns land on one or both sides of a water course, who desires to erect or heighten any dam thereon, or construct or enlarge a race therefrom, for the purpose of propelling any mill or machinery to be erected on such stream by the water thereof, may file a petition in the office of the clerk of the district or circuit court of the county in which such mill or machinery is to be erected.

Owner of land
to file petition.
R. § 1264, 1274.
10 G. A. ch. 31.

The action here contemplated is to be commenced by the mill owner. The land owner is left to his common law remedy or his remedy in equity. And the mill owner may, after proceedings are commenced, dismiss them without the consent of the other party: *Hunting v. Curtis*, 10-152.

The dam, when erected in accordance with these provisions, will not be a nuisance, but may be so erected and maintained as to become such: *The State v. Close*, 35-570.

This and the following sections are not unconstitutional: *Burnham v.*

Thompson, 35-421; the use, though for private profit, is such a public one as to authorize the taking of public property therefor; (*arguendo*): *Stewart v. Board of Supervisors, &c.*, 30-9.

There is no limitation as to the purpose for which the mills and other machinery are to be used: *Burnham v. Thompson*, 35-421.

The proceedings need not necessarily be had before the work is commenced, but may be instituted while it is in progress: *Ibid.*

SEC. 1189. Such petition shall describe with reasonable certainty the locality where such mill or machinery is to be erected, together with that of such dam or race, and also of the lands that will be overflowed or otherwise affected thereby, and the names of the owners thereof. The person filing the petition shall be known as plaintiff and the owners of the land as defendants.

What to con-
tain.
R. § 1265.

SEC. 1190. The clerk shall thereupon issue an order, to which shall be attached a copy of the petition, directed to the sheriff, commanding him to summon a jury composed of twelve disinterested electors of his county to meet on a day fixed in said order upon the lands therein described, which order, including the copy of the petition, shall be served on the defendants in the same manner and for the same length of time previous to the day fixed in the order as is required for the service of original notices. If any of said defendants are non-residents of the state, they may be served by publication as original notices in like cases are required to be served. And if any defendant is a minor or insane person

Order to issue
for a jury: no-
tice of served
on defendants.
R. § 1266, 1270.

who has no guardian, the clerk, at the time of issuing the order, may appoint a guardian to defend for him by endorsement on such order.

When lands
are in another
county.
R. § 1270.

SEC. 1191. If any of the lands are situate in a county other than that in which the petition is required to be filed, the proceedings herein referred to may take place to the same extent and in the same manner as if such lands were situated in the county where the petition is filed..

Jury to ap-
praise dam-
ges.
11 G. A. ch. 119,
§ 1.

SEC. 1192. The jury shall be sworn to impartially and to the best of their skill and judgment view the lands described in the petition, and ascertain and appraise the damages each of the defendants will sustain by reason of such lands being overflowed or otherwise injuriously affected by the dam or race, or the heightening or enlarging the same, and whether the dwelling house, out-house, orchard, or garden of any defendant will be so affected, and if so, whether the same has been placed there for that purpose.

Hear witnesses
and report find-
ing.
Same, § 2.

SEC. 1193. The jury may, in addition to examining the premises, hear and examine witnesses. They shall report their findings in writing and attach the same to the order, which shall be returned by the sheriff to the clerk, and if it appears therefrom that the dwelling house, out-hous', orchard, or garden of any defendant will be injuriously affected, and that the same was placed on the premises for that purpose, such fact shall not be considered any bar or hindrance to the construction or building of the race or dam.

Appeal.

SEC. 1194. Either party may appeal from such assessment of damages to the court where the said proceedings are pending within thirty days after the assessment is made, in the manner, and the proceedings on such appeal shall be, as provided in chapter four of this title.

[As amended by 15th G. A., ch. 22.]

Cause shown.
R. § 1268.

SEC. 1195. When said report is filed, the clerk shall issue an order directed to the defendants, requiring them to appear at the next term of the court and show cause, if any they have, why a license should not be granted to construct the dam or race, which order shall be served in the same manner as hereinbefore directed.

Objections
filed: plead-
ings: amend-
ment of: an-
other jury.

SEC. 1196. On or before the day fixed in the order for the defendants to show cause, they may file any objections to the prior proceedings or to granting the license they see proper. The petition and objections filed thereto shall constitute the pleadings, and the same may be amended upon such terms as the court deems just, and if the proceedings of the jury are found informal or defective in substance, the court may order a new jury to be empanelled upon such terms as to notice as it may direct. The return of the sheriff may be amended at any stage of the proceedings in accordance with the facts.

A defendant may plead and prove by way of objection, facts tending to show that the granting of the license would be unreasonable, or not for the public benefit; but he cannot thus set up matters legitimately involved in the question of damages, submitted to the jury, and pertinent only to an application to set aside their finding and award a new inquiry. Until set aside, their ascertainment must be considered conclusive: *Gammell v. Potter*, 6-548.

The overruling by the court of a

motion to set aside the verdict of the jury and quash the writ, may be appealed from, without any final judgment having been rendered: *Burnham v. Thompson*, 35-421.

SEC. 1197. Testimony may be taken to be introduced on the final hearing before the court, in the same manner that testimony is taken in equitable actions triable on written testimony. ^{Written testimony, 11 G. A. ch. 119, § 2.}

SEC. 1198. If it shall appear to the court that neither the dwelling-house, out-house, garden, or orchard of any defendant will be overflowed or injuriously affected, and the court shall judge it reasonable and for the public benefit, license shall be granted to construct such dam or race, on the plaintiff paying to the proper parties the damages found by the jury and decreed by the court. ^{License granted, R. § 1269.}

SEC. 1199. If the plaintiff does not begin within one year thereafter to construct said dam or race, and finish and have in operation the mill and machinery in three years thereafter, and afterwards keep it in good repair for the accommodation of the public, or in case said dam, race, mill or machinery be destroyed, he shall not begin to repair or rebuild it within one year, and finish it in three years, then said license shall be forfeited. ^{Forfeiture of same.}

SEC. 1200. If the order shall not be executed by the sheriff on the day therein mentioned, he may, from time to time, appoint another day, notice thereof being given to the parties interested as hereinbefore provided; and if inquest cannot be completed in one day, the sheriff shall adjourn the jury, from day to day, until its completion. ^{Continuance, R. § 1270.}

SEC. 1201. No proceeding under this chapter shall bar an action which could have been maintained if this chapter had not been enacted, unless the prosecution or action was actually foreseen and estimated upon the inquest. ^{No bar to action, R. § 1271.}

This section does not bar an action for damages accruing before the proceeding. But where the jury found that certain land would be affected, nevertheless, an action for damages subsequently suffered must have been foreseen and estimated, and that such action was therefore barred: *Watson v. Van Meter*, 43-76.

SEC. 1202. Any owner of land affected by any proceedings under this chapter, who has not been made party by reason of want of notice, or from any other cause, may be made party thereto by proper proceedings at any time thereafter. ^{New party made, R. § 1272.}

SEC. 1203. Costs and fees under this chapter shall be the same as in other cases for like services, and shall be paid by the plaintiff. ^{Costs, R. § 1273.}

SEC. 1204. Where the water backed up by any dam belonging to any mill or machinery is about to break through or over the banks of the stream or race, or to wash a channel, so as to turn the water of such stream or race, or any part thereof, out of its ordinary channel, whereby such mill or machinery will be injured or affected, the owner or occupier of such mill or machinery, if he do not own such banks, or the lands lying contiguous thereto, may, if necessary, enter thereon, and erect and keep in repair such embankments and other works as shall be necessary to prevent such water from breaking through or over the banks of such stream or race, or washing a channel as aforesaid, such owner or occupier committing thereon no unnecessary waste or damage, and ^{Repair of injured banks or race by owner of machinery, R. § 1273, 1276.}

being liable to pay any damages which the owner of the lands may actually sustain by the erection and repair aforesaid.

Penalty for injuring embankment. SEC. 1205. If any person shall injure, destroy, or remove any such embankment, or other works, the owner or occupier of such mill or machinery may recover of such person all damages he may sustain by reason of such injury, destruction, or removal.

Utilizing fall below dam. SEC. 1206. Any person owning and using a water power for the purpose of propelling machinery, shall have the right to acquire, maintain, and utilize the fall below such power for the purpose of improving the same, in like manner and to the same extent as provided in this chapter for the erection or heightening of mill dams. After such right has been acquired, the fall shall be considered part and parcel of said water power or privilege, and the deepening or excavating of the stream or tail race as herein contemplated shall in no way affect any rights relating to such water power acquired by the owner thereof prior thereto.

CHAPTER 2.

OF DRAINS, DITCHES, AND WATER-COURSES.

Supervisors to locate. SEC. 1207. The board of supervisors of any county having a population of five thousand inhabitants, as shown by the last preceding census, may locate and cause to be constructed ditches or drains, or change the direction of any water-course in such county, whenever the same will be conducive to the public health, convenience, or welfare.

[As amended by 16th G. A., ch. 140, § 1.]

The provisions of this chapter are not unconstitutional: *Hatch v. Pottawattamie Co.*, 43-442. for private advantage, but for the public good: *Patterson v. Baumer*, 43-477.

The work is not to be undertaken

Proceedings: SEC. 1208. A petition signed by a majority of persons resident in the county, owning land adjacent to such improvement, shall be first filed in the office of the county auditor, setting forth the necessity of the same, the starting point, route, and termini. A bond shall be filed in said office with sufficient sureties to be approved by the auditor, and conditioned to pay all costs and expenses incurred in case the supervisors refuse to grant the prayer of the petition. The auditor shall thereupon place a copy of said petition in the hands of the county surveyor, or a competent engineer, who shall take with him the necessary assistants and proceed to make a survey of the proposed ditch, drain, or change in the direction of the water-course, and return a plat and profile of the same to the auditor; such return shall set forth a full and detailed description of the proposed improvement, its availability, necessity, and probable cost, with a description of each tract of land owned by different persons through which the proposed improvement is to be located, how it will be affected thereby,

and its situation and level as compared with that of adjoining lands, together with such other facts as he may deem material. The county auditor shall, immediately thereafter, cause notice in writing to be served on the owner of each tract of land along the route of the proposed ditch, drain, or change in the direction of such water-course, who is a resident of the county, of the pendency and prayer of said petition, and the session of the board of supervisors at which the same will be heard, which notice shall be served ten days prior to said session, in the same manner that original notices are required to be served; in case any such owner is a non-resident of the county, such notice shall be published for two consecutive weeks in some newspaper published in the county.

SEC. 1209. The supervisors, at the session set for the hearing of said petition, shall, if they find the preceding section to have been complied with, proceed to hear and determine said petition; and, if they deem it necessary, shall view the premises, and if they find such ditch, drain, or change in the direction of the water-course to be necessary, and that the same will be conducive to the public health, convenience, or welfare, and no application shall have been made for compensation as provided in the next section, shall proceed to locate and establish such ditch, drain, or water-course, on the route specified on the plat and return of said county, surveyor or engineer. But, if any application for compensation has been made, further proceedings shall be adjourned to the next regular session; and the county auditor shall forthwith proceed to appoint appraisers to assess and determine the damages and compensation of such claimant, who shall proceed in the manner as provided by law for the assessment of damages in the opening of highways; and the compensation so found and assessed in favor of said claimant, shall be paid, in the first instance, by the parties benefited by such improvement, or secured to be paid upon such terms and conditions as the county auditor may deem just and proper; and the said supervisors shall, at the next regular session after such compensation shall have been assessed and paid, or secured as aforesaid, proceed to locate and establish such ditch, drain, or water-course, as hereinbefore provided.

SEC. 1210. Any person claiming compensation for land required for the purpose of constructing any such ditch, drain, or water-course, or for damages sustained by the change of direction of any such water-course, shall make his application in writing therefor to the county supervisors on or before the first day of the session at which the petition has been set for hearing, and, on failure to make such application, shall be deemed and held to have waived his, her, or their right to such compensation.

[As amended, 16th G. A., ch. 140, § 2.]

SEC. 1211. Said supervisors, whenever they shall have established any such ditch, drain, or water-course, shall divide the same into suitable sections, not less in number than the number of owners of land through which the same may be located, and shall also prescribe the time within which work upon each section shall be completed.

SEC. 1212. The county auditor shall cause notice to be given of the time and place of letting, and of the kind and amount of

Supervisors to
view premises:
damages
claimed: how
assessed:
Same, § 4.

When and how
claimed.
Same, § 3.

Supervisors to
divide the
work.
Same, § 5.

Auditor to let the work to be paid for out of county treasury.
Same, § 8.

work to be done upon each section, and the time fixed for its completion, by publication for thirty days in some newspaper printed and of general circulation in said county, and shall let the work upon the sections respectively to the lowest bidder therefor; and the person or persons taking such work at such letting shall be paid in the following manner: The engineer in charge of the construction of the ditch or drain shall furnish the contractors monthly estimates of the amount of work done on each section; upon the filing of such estimates with the county auditor, the auditor shall draw a warrant in favor of the contractor for eighty per cent of the value of the work done, according to the estimate; and when said ditch or drain is completed to the satisfaction of the engineer in charge, and when he so certifies the same to the county auditor, then the auditor shall draw a warrant in favor of said contractor upon the "drainage fund" for the balance due the contractor, as provided in the following section. If any person to whom any portion of said work shall be let as aforesaid, shall fail to perform said work, the same shall be re-let by the county auditor, in the manner hereinbefore provided.

[As amended, 16th G. A., ch. 140, § 1, striking out the last lines of the original, and by 18th G. A., ch. 85, § 8, changing the provisions as to manner of payment.]

Costs and fees: how paid.
Same, § 8.

SEC. 1213. The auditor and surveyor, or engineers, shall be allowed such fees for services under the preceding sections of this chapter as the supervisors shall in each case deem reasonable and allow; and all other fees and costs accruing under the preceding sections shall be the same as provided by law for like services in other cases; and all costs, expenses, cost of construction, fees, and compensation for property appropriated, or damages sustained by the change of direction of such water-course, which shall accrue and be assessed and determined, shall be paid out of the county treasury, from the fund collected for that purpose, on the order of the county auditor.

[As amended, 16th G. A., ch. 140, § 3.]

A payment out of the general funds, ed by the next section invalid: Patterson v. Baumer, 43-477, 481.
contrary to the provisions of this s.c-
tion, does not render the tax provid-

Equitable apportionment made of expenses, costs, and fees.
Same, § 9.

SEC. 1214. The supervisors shall make an equitable apportionment of the costs, expenses, costs of construction, fees, and compensation for property appropriated, or damages sustained by the change of direction of such water-course, which shall accrue and be assessed among the owners of the land benefited by the location and construction of such ditch, drain, or water-course, in proportion to the benefit to each of them through, along the line, or in the vicinity of whose lands the same may be located and constructed respectively. And the same may be levied upon the lands of the owners so benefited in said proportions, and collected in the same manner that other taxes are levied and collected for county purposes; and said supervisors shall, when necessary, cause said ditches, drains, or water-courses to be re-opened and repaired, and the costs thereof shall be apportioned, assessed, levied, and collected as hereinbefore provided for the costs of the construction of such ditches, or drains, and the amount so collected shall be paid out of the county treasury from the fund collected for that purpose on the order of the county auditor. And the divert-

ing, obstructing, impeding or filling up of such drains, ditches or water-courses in any manner by any person without legal authority, is hereby declared a nuisance, and any person convicted of *Nuisance* such crime, shall be punished as provided in title 24, chapter 15 of the code for the punishment of nuisances.

[As amended; 16th G. A., ch. 140, § 4.]

SEC. 1215. The auditor shall keep a full and complete record of all proceedings had in each case. Record kept.
Same, § 7.

SEC. 1216. The petitioners or any of them, or the applicant for compensation for land taken or for damages sustained by reason of the change of direction of any water-course, may appeal from the order locating and establishing such ditch or drain or changing the direction of such water-course or refusing so to do, and from the amount allowed as damages by pursuing the same method provided for appeals from assessment of damages in the location of highways and the auditor shall make out transcripts as provided in appeals taken from the assessment of damages in case of highways.

[Substitute for the original section; 16th G. A., ch. 140, § 5.]

DRAINS THROUGH TWO OR MORE COUNTIES.

[Seventeenth General Assembly, Chapter 121.]

SEC. 1. In all cases when it becomes necessary to construct a drain through two or more contiguous counties or parts of counties, and a petition for such drain has been presented to the board of supervisors of the counties through which such drain is to be constructed, it shall be the duty of the board of supervisors of each of such counties to appoint a commissioner to act with the commissioner or commissioners of such other counties in locating such drain.

Board of supervisors
shall appoint
commissioner
to locate.

Duty of commissioners.

SEC. 2. It shall be the duty of the commissioners appointed under section one of this act, to meet within twenty days after the appointment of the last commissioner by such board of supervisors, and at once locate such drain through their respective counties.

Preceding act
amended.

[Eighteenth General Assembly, Chapter 85.]

Commissioners
to appoint en-
gineer.

SEC. 1. Chapter 121 of the acts of the seventeenth general assembly, *be* [is] amended by adding thereto the following sections:

Survey and
plat: report
of commis-
sioners.

SEC. 2. The said commissioners shall appoint a competent engineer, who shall have charge of the construction of said ditch, drain or change in said water-course.

SEC. 3. Said commission shall continue until the drain or ditch is fully completed. They shall, in connection with the engineer in charge, proceed to make a survey of the proposed ditch, drain or change of water-course, and return a plat and profile of the same to the county auditor of each county through which the same may pass. Such return shall set forth a full and detailed description of the proposed improvement, its availability, necessity and probable cost, with a description of each tract of land owned by different persons through which the proposed improvement is to be located, or which may be benefited by reason of its construction, how it will be affected thereby, and its situation and level as

compared with that of adjoining lands, together with such facts as they may deem material. The county auditor and the board of supervisors of each county shall then proceed in the same manner as though the ditch or drain was all located in one county, as provided by sections one thousand two hundred eight, and one thousand two hundred nine, code of 1873.

Appeal.

SEC. 4. Any person aggrieved by the action of the board of supervisors of any county in locating said ditch or drain, or in fixing the number of acres of land benefited by reason of the construction of such ditch or drain, shall have the right of appeal to the circuit court of the county in which such person's land may be situated, by serving notice thereof to the first four petitioners, within twenty days after such action of the board of supervisors.

Proportional tax.

SEC. 5. When a ditch or drain has been located in two or more counties, the land benefited by the ditch or drain shall be proportionately taxed, as provided in section twelve hundred and fourteen, code of 1873, the same as though the drain and land were all in one county.

Excess and deficiency.

SEC. 6. When a greater amount of money is collected by the county treasurer of a county through which such ditch or drain may pass than is needed to pay for the work actually done in that county, and if in any county there should be more work done than the equitable tax in that county will pay for, then the boards of supervisors of the several counties shall confer together and ascertain where the excess and deficiency exist, and the county where the excess exists shall transfer the excess to the county or counties where the deficit exists.

Additional levy.

SEC. 7. If the levy first made by the several boards of supervisors should be insufficient to pay for the construction of the ditch or drain, then the several boards may make an additional levy in the same ratio as the first was made.

[Sec. 8 amends § 1212, which see.]

DRAINAGE OF SWAMP OR MARSH LAND.

Application for made by petition to township trustees.
13 G. A. ch. 159, § 1.

SEC. 1217. Any person owning any swamp, marsh, or wet land, desiring to drain the same by cutting a ditch through the land of others, and who is unable to agree upon the terms thereof with such other persons, may make application in writing to the township trustees of the township where such swamp or marsh land is situated, with a description of such land, the commencement and termini of the proposed ditch, and a description of the land belonging to others, with their names, through which it will pass. Such petition shall be filed by the township clerk.

Meeting of trustees' notice thereof given: land owners. Same, § 3.

SEC. 1218. When the application is filed the clerk shall notify the trustees, who shall immediately determine upon the time and place they will meet to consider the application, and shall cause the applicant and all persons owning land through which said ditch is to pass, who are residents of the county, to be notified of the time and place of said meeting, which notice shall be served ten days previous to such day in the same manner as original notices, and if any of such owners of land are non-residents of the county, said notice shall be served on them by posting up

copies thereof in three public places in the township, satisfactory proof by affidavit of such posting, and places where posted, shall be furnished said trustees and filed with the clerk.

SEC. 1219. Upon the day fixed for the hearing, the trustees, if satisfied that the requirements of the preceding section have been complied with, may proceed to hear and determine the matter of the application, or they may adjourn the same to a future day, and, if necessary, may cause another notice to be served in the manner above required. But such adjournment shall not be for a longer period than twenty days.

SEC. 1220. If the trustees are satisfied from a personal examination of the premises, or from evidence of witnesses, that such swamp or marsh lands are a source of disease, that the public health will be promoted by draining the same, that such ditch is necessary for the proper cultivation of such lands, that the permanent value thereof will be increased thereby, and that it is necessary, in order to drain said lands, that such ditch should pass through the lands of others, they shall determine the direction, depth, and width of such ditch, as near as may be, and, if necessary, may employ the county surveyor to assist them, and after such examination, or hearing such evidence, said trustees may order or refuse the construction of said ditch. All the findings and doings of the trustees shall be reduced to writing, and entered of record by the clerk.

SEC. 1221. The applicant shall pay all costs of the proceedings before the trustees, and they may require, before fixing the day of meeting as above provided, such applicant to give bond with sureties, to be approved by the township clerk, conditioned to pay all such costs and expenses.

SEC. 1222. If the trustees are satisfied the ditch will damage the land of any person, other than the applicant for the ditch, through which it has been located, they shall assess the amount to be paid the owner, and after payment, or tender of the same, to the person entitled thereto within thirty days after the same is assessed or ascertained on appeal in the circuit court, or, in case no damages are assessed, the applicant may enter upon the land through which the ditch passes, with the necessary implements to accomplish the work.

SEC. 1223. The applicant, or any person through whose land the ditch is located, may appeal from so much only of the order or action of the trustees as relates to the assessment of damages to the circuit court, in the same manner as to bond, the conditions thereof, notice of appeal, and the time within which it is to be taken, as is provided by law in cases of appeals from the assessment of damages on the location of highways. The township clerk shall approve the bond and make out a transcript of the proceedings before the trustees within ten days after the bond is filed and approved, and file the same with the clerk.

SEC. 1224. On the trial of such appeal, the person claiming damages shall be plaintiff and the applicant defendant, and if the appeal is taken by any person other than the applicant, judgment shall be rendered by the court for the amount found due such person as damages, which may be enforced as are other judgments; and if the appeal is taken by the applicant, no judgment

Hearing: adjournment of Same, § 3.

Trustees determine course, width, and depth of ditch record of made, Same, §§ 1, 3, 6.

Costs: by whom paid: bond required. Same, § 9.

Trustees to assess damages to land owner. Same, §§ 4, 5.

Appeal: how taken. Same, § 7.

Trial of: in circuit court.

shall be rendered for the amount found due any person as damages, but the amount thereof shall be certified to the township clerk, and the same shall thereafter be regarded as if the same had been assessed by the trustees at the time so certified. The court shall make such disposition of the costs, as is required in similar cases in appeals from the assessment of damages on the location of highways. But the payment or acceptance of the damages assessed by the trustees shall bar the right to appeal.

SEC. 1225. If said drain shall cross a highway, it shall be bridged or covered at the expense of the applicant.
Same, § 10.

SEC. 1226. If the ditch becomes out of repair, the applicant, or any one interested therein, may make application in writing to the township trustees for leave to repair the same, whereupon such trustees shall make such orders in relation thereto as they deem proper, and may empower such applicant or other interested person to enter upon the land of another for the purpose of repairing such ditch.
Ditch repaired. Same, § 8.

SEC. 1227. Any person who shall dam up, obstruct, or in any way injure any ditch or ditches so opened, shall be liable to pay to the person owning or possessing the swamp, marsh, or other low lands for the draining of which such ditch or ditches shall have been opened, double the damages that shall be assessed by the jury for such injury, and in case of a second or other subsequent offense by the same person, treble such damages.
Penalty for obstructing. Same, § 11.

DRAINAGE OF COAL LANDS.

SEC. 1228. Any person, or corporation, owning or possessing any land underlaid with coal, who is unable to mine such coal by reason of the accumulation of water in such mine, may drain the same through, over, or under the surface of land belonging to another person, and if such person or corporation and the owner of the land cannot agree as to the amount of damages that will be sustained by such owner, the parties may proceed to have the necessary right of way condemned and the damages assessed under the provisions of chapter four of this title.
How done: damages assessed. 10 G. A. ch. 91. 11 G. A. ch. 66.

DRAINAGE OF LEAD MINES.

SEC. 1229. Any person or corporation, who, by machinery, such as engines or pumps, or by making drains or adit levels, or in any other way, shall rid any lead bearing mineral lands or lead mines of water, thereby enabling the miners and the owners of mineral interests in said lands to make them productive and available for mining purposes, shall be entitled to receive one-tenth of all the lead mineral taken from said lands as compensation for said drainage.
Compensation for. 10 G. A. ch. 37, § 1.

The provision giving one-tenth of the lead mineral as compensation in such cases, is not unconstitutional as depriving the owner of his property without due process of law: *Ahern v. Dubuque, &c., Mining Co.*, 48-140. The constitutionality of this and the six following sections, doubted: *Code Com'r's Rep.*

SEC. 1230. The owners of the mineral interest in said lands, and persons mining upon and taking lead mineral from said lands,

shall jointly and severally set apart and deliver from time to time, when demanded, the said one-tenth part of said mineral taken from said lands to the person or corporation entitled thereto as compensation for drainage. The owners of the mineral interest in said lands, shall allow the party entitled to such compensation, and his agents, at any and all times to descend into and examine said mines and to enter any building occupied for mining purposes upon any of said lands and examine and weigh the mineral taken therefrom.

SEC. 1231. Upon the failure or refusal of any owner of the mineral interest in said lands, or of any person taking the mineral therefrom, to comply with the provisions of the preceding section, the person or corporation entitled to said compensation for drainage may sue for and recover the value of said mineral in any court of competent jurisdiction. And upon the hearing of any such case, if it shall appear that the defendant obstructed the plaintiff in the exercise of the right to examine the said mines, and to weigh said mineral, or concealed or secretly carried away any mineral taken from said lands, the court shall render judgment for double the amount proved to be due from such defendant.

SEC. 1232. The person or corporation entitled to said drainage compensation, may, at any time, leave with any smelter of lead mineral in this state, a written notice stating that said person, or corporation, claim of the persons named in said notice, the amount to which said person or corporation may be entitled, which notice shall have the effect of notices in garnishment, and also authorize the said smelter to retain, for the use of the persons entitled thereto, the one-tenth part of the mineral taken from said land and received from the person named in said notice; the payment or delivery of the one-tenth part of the mineral taken from any of said lands by any one of the persons whose duty it is made hereby to pay or deliver the same, shall discharge the parties liable jointly with him except their liability to contribute among themselves.

SEC. 1233. Any person, or corporation, engaged as aforesaid, in draining such mines and lead-bearing mineral lands, whenever he or they shall deem it necessary for the prosecution of their work, shall have the right of way upon, over, or under the surface of such mineral lands and the contiguous and neighboring lands, for the purpose of conveying the water from said mineral lands by troughs, pipes, ditches, water races, or tunnels, and the right to construct and use shafts and air holes in and upon the same, doing as little injury as possible in making said improvements.

SEC. 1234. If the said person, or corporation, engaged in draining as aforesaid, and the owner of any land upon which said right of way may be deemed necessary cannot agree as to the amount of damages which will be sustained by the owner by reason thereof, the parties may proceed to have the same assessed under the provisions of chapter four of this title.

SEC. 1235. The foregoing provisions shall not be construed to require the owners of the mineral interest in any of said lands to take mineral therefrom, or to authorize any other person to take the mineral from said lands without the consent of the said owners.

To be set apart
miners to
allow examina-
tion of mines.
Same, § 2.

Penalty.
Same, § 3.

Notice to smel-
ters: effect of.
Same, § 4.

Right of way.
Same, § 5.

Damages for
Same, § 6.

Consent of
owners re-
quired.
Same, § 7.

CHAPTER 3.

OF WATER-POWER IMPROVEMENTS.

SECTION 1236. There is granted to any corporation hereafter organized in accordance with law, for the purpose of utilizing and improving any water-power within this state, or in the streams lying upon the borders thereof the right to take and hold so much real estate as may be necessary for the location, construction, and convenient use of its canals, conduits, mains, and water-ways, or other means employed in the utilization of such water-power, and for the construction of such buildings and their appurtenances as may be required for the purposes aforesaid. Such corporation may also take, remove, and use for the construction and repair of its said canals, water-ways, buildings, and appurtenances, any earth, gravel, stone, timber or other materials, on or from the land so taken. Compensation shall be made for the lands and materials so taken and used by such corporation, to the owner, in compliance with and in the manner provided in chapter four of this title.

SEC. 1237. Such corporations may use, raise, or lower, any highway for the purpose of having their said canals, water-ways, mains, and pipes, pass over, along, or under the same; and in such case shall put such highway, as soon as may be, in good repair and condition, for the safe and convenient use of the public. And such corporation may construct and carry their canals, conduits, water-ways, mains, or water-pipes, across, over, or under any railway, canal, stream, or water-course, when it shall be necessary for the construction or operation of the same, but shall do so in such manner as not to impede the travel, transportation, or navigation upon, or other proper use of, such railway, canal, or stream. But the powers conferred in this section, can only be exercised in cities and towns with the consent and under the control of the city council or trustees of said municipal corporations.

SEC. 1238. Such corporations are authorized to pass over, occupy, and enjoy, any of the school, university, and saline, or other lands of this state, whereof the fee, or any use, easement, or servitude therein is in the public, making compensation therefor. But no more of such land shall be taken than is required for the necessary use and convenience of such corporations.

SEC. 1239. Such corporations, in addition to other powers, shall have the following: To borrow money for the purpose of constructing, renewing, or repairing their works, and to make, execute, and deliver contracts, bonds, notes, bills, mortgages, deeds of trust, and other conveyance, charging, or encumbering their property, including all and singular their franchises, or any part or parcel thereof; to erect maintain, and operate canals, conduits, mains, water-ways, mills, factories, and other buildings and machinery, including water-ways, sluices, and conduits, for the purpose of carrying waste water off from said premises to the stream from which the same was taken, or other convenient place; to let, lease, or sell, and convey any portion of their water supply, and any of the buildings, mills, or factories, or machinery aforesaid, for

Powers of corporations organized for.
14 G. A. ch. 79,
§ 1.

Same: consent of cities required.
Same, § 2.

Right of way over lands belonging to public: granted.
Same, § 3.

Powers enumerated.
Same, § 4.

such sums, prices, rents, tolls, and rates, as shall be agreed upon between the parties; and to lay down, maintain, and operate, such water mains, conduits, leads, and service pipes as shall be necessary to supply any building, village, town, or city, with water; and the grantee of any such corporations, or purchaser of the said property, franchise, rights and privileges, under and by virtue of any judicial sale, shall take and hold the same as fully and effectually, to all intents and purposes, as the same were held and enjoyed by such corporations.

[The word "prices" in the fourteenth line is omitted in the printed code.]

SEC. 1240. Such corporation shall take, hold, and enjoy the privilege of utilizing and improving the water power, and the rights, powers and privileges aforesaid, which shall be specifically mentioned and described in its articles of incorporation; provided, it shall proceed in good faith to make the improvements and employ the powers in its said articles of incorporation mentioned, and shall, within two years from the date of its organization, provide the necessary capital, complete the preliminary surveys, and actually commence the work of improving and utilizing the water power, and furnishing the supply of water so mentioned in its articles of incorporation; and said water works and canals shall be completed within five years from the time when said corporation has been organized; and, provided further, that the rights, powers, and privileges conferred by this chapter shall be at all times subject to legislative control.

Must commence in two and complete in five years:
legislative control retained.
Same, § 5.

CHAPTER 4.

TAKING PRIVATE PROPERTY FOR WORKS OF INTERNAL IMPROVEMENT.

SECTION 1241. Any railway corporation organized in this state, or chartered by or organized under the laws of the United States or any state or territory, may take and hold, under the provisions of this chapter, so much real estate as may be necessary for the location, construction, and convenient use of its railway, and may also take, remove, and use for the construction and repair of said railway and its appurtenances, any earth, gravel, stone, timber, or other materials, on or from the land so taken; the land so taken otherwise than by the consent of the owners, shall not exceed one hundred feet in width, except for wood and water stations, unless where greater width is necessary for excavation, embankment, or depositing waste earth.

By railway :
limit of
R. & 1314

[As amended by inserting the words in the second and third lines commencing "or chartered by" and ending "or territory;" 17th G. A., ch. 126.]

The provisions of this chapter apply as well to railways operated by animal power as to those operated by steam: *City of Clinton v. C. & L. H. R. Co.*, 37-61. | The benefit of these provisions is not extended to foreign corporations: *Holbert v. S. L. K. C. & N. R. Co.*, 45-23. [Decided before the amendment of the section.]

The use for which the property is authorized to be taken, although for private profit, is a public one, and the taking of private property therefore is not unconstitutional. (*Arguendo*): *Stewart v. Board of Supervisors*, 30-9.

The company is not limited to fifty feet on each side of its track, but the track may be located anywhere on the one hundred feet: *Stark v. S. C. & P. R. Co.*, 43-501.

Timber standing upon the property taken for right of way, other than that necessary for the construction of the railway, remains the property of the owner of the land: *Preston v.*

Dams constructed to obtain water: limitation on right.
12 G. A. ch. 117, § 1.

SEC. 1242. It may, also, take and hold additional real estate at its water-stations, for the purpose of constructing dams and forming reservoirs of water to supply its engines. Such real estate shall, if the owner requests it, be set apart in a square or rectangular shape, including all the overflowed land, by the commissioners as hereafter provided; but the owner of the land shall not be deprived of access to the water or the use thereof in common with the company on his own land. And the dwelling-house, outhouse, orchards, and gardens of any person shall not be overflowed or otherwise injuriously affected by any proceeding under this section.

Pipes laid down and kept in repair: damages caused recovered by suit.
Same, § 2.

SEC. 1243. Any such railway corporation may lay down pipes through any land adjoining the track of the railway, not to a greater distance than three-fourths of a mile therefrom, unless by consent of the owners of the land through which the pipes may pass beyond that distance, and maintain and repair such pipes, and thereby conduct water for the supply of its engines from any running stream; and shall, without unnecessary delay, after laying down or repairing such pipes, cover the same so as to restore the surface of the land through which they may pass to its natural grade; and shall, as soon as practicable, replace any fence that it may be necessary to open in laying down or repairing such pipes; and the owner of the land through which the same may be laid, shall have a right to use the land through which such pipes pass in any manner so as not to interfere therewith; said pipes shall not be laid to any spring, nor be used so as to injuriously withdraw the water from any farm; *provided*, that such corporation shall be liable to the owner of any such land for any damages occasioned by laying down, regulating, keeping open, or repairing such pipes, such damages to be recoverable from time to time as they may accrue in any ordinary action in any court of competent jurisdiction.

MANNER OF CONDEMNATION.

Sheriff to summon jury on demand of either party: proceedings by R. & 1817.
12 G. A. ch. 117, § 3.

SEC. 1244. If the owner of any real estate, necessary to be taken for either of the purposes mentioned in the three preceding sections, refuse to grant the right of way, or other necessary interest in said real estate required for such purposes, or, if the owner and

D. & P. R. Co., 11-15.

It would seem that the company may sink wells on its right of way, for the purpose of supplying its engines with water, and would not be liable in damages for thus diverting percolating water from a spring upon the adjoining land of the person granting the right of way: *Hougan v. M. & St. P. R. Co.*, 33-558.

The right of way over land for a railway, is an incumbrance for which a grantee of the land may recover on a covenant against incumbrances, although he knew of the existence of such right of way at the time of purchasing: *Barlow v. McKinley*, 24-69.

the corporation cannot agree upon the compensation to be paid for the same, the sheriff of the county in which said real estate may be situated, shall, upon the application of either party, appoint six disinterested freeholders of said county, not interested in a like question, who shall inspect said real estate and assess the damages which said owner will sustain by the appropriation of his land for the use of said corporation, and make report in writing to the sheriff of said county, and if said corporation shall, at any time before it enters upon said real estate for the purpose of constructing said railway, pay to said sheriff for the use of said owner, the sum so assessed and returned to him as aforesaid, it may construct and maintain its railway over and across such premises.

[The word "three" in the second line is not in the original. It is left as having probably been inserted by the editor.]

The damages here contemplated are the "just compensation" provided for by Const., art. I, § 18. The owner is to have a fair equivalent in money for the injury done him by the taking of his property. It is the right of way which is appropriated, not the fee in the land, but the right of way is such as is peculiar to a railroad, and is the right to all freedom in locating, constructing, using and repairing such road and its appurtenances, and taking and using for that purpose only, any earth, gravel, stone, timber, &c., on or from the land taken, and the right to make cuts, embankments, &c.; and includes the rights incident to rapid locomotion, as against the owner of the fee. It seems that the right of way is intended to be in perpetuity: *Henry v. D. & P. R. Co.*, 2-288.

The question as to the proper measure of damages in such cases discussed and the true measure declared to be the difference between the market value of the land entire, and its market value after the right of way is carved out; (following *Sater v. Burlington, &c., Plank Road Co.*, 1886); *Iid.*

The amount of damage to be allowed is what will compensate plaintiff for the appropriation of the right of way. It may be more or less than the value of the property taken: *Gear v. C. C. & D. R. Co.*, 39-23.

The damages are not limited to the value of the land taken but include such as result proximately from the use for which it is taken: *Kuchem v. C. C. & D. R. Co.*, 46-366, 376.

Damage to other property of the same owner, not crossed by the right of way, is not to be taken into account: *Fleming v. C. D. & M. R. Co.*, 34-353. But damages to the entire premises necessarily and properly used by the owner in his business

should be estimated, although such premises are divided by a street or highway: *Renwick v. D. & N. W. R. Co.*, 49-664; and where the right of way passes through a farm the owner may show as damages the depreciation in value of the whole farm, and is not limited to the damage to the governmental subdivision through which the road runs: *Hartshorn v. B. C. R. & N. R. Co.*, 52-613.

Where the damages to a lease-hold estate are to be assessed, the proper measure of damages is the difference in value of the annual use of the property, before taking and after. *Renwick v. D. & N. W. R. Co.*, 49-664.

Increased danger of loss by fire is an element of damage for which compensation should be made: *Small v. C. C. I. & P. R. Co.*, 53-338, 344.

The cost of building additional fence, and keeping the same in repair, should not be allowed as part of the damages: *Henry v. D. & P. R. Co.*, 2-288; *Kennedy v. D. & P. R. Co.*, 2-521; *Hanrahan v. Fox*, 47-102.

Negligent construction of the road and damages consequent thereupon, are not to be considered in assessing damages: *King v. Iowa Midland R. Co.*, 34-458.

The obstruction of a public highway is not a proper element of compensation to the owner of the property in this proceeding: *Gear v. C. C. & D. R. Co.*, 43-83; *Fleming v. C. D. & M. R. Co.*, 34-353.

The method provided for ascertaining and compelling the payment of the damages is exclusive, and none other can be pursued. But the owner is not deprived of his right to bring action for the possession of his property, when taken without compensation: *Daniels v. C. & N. W. R. Co.*, 35-129.

If the company enter upon the land before the damages are paid, they may be treated as trespassers. The owner is not compelled to resort to an injunction, or an action for the amount: *Henry v. D. & P. R. Co.*, 10-540.

The proceedings may be instituted by the land owner after the railway is completed: *Hibbs v. C. & S. W. R. Co.*, 39-340, also by the railway company; and in such case the proper measure of damages is the value of the land at the time of its appro-

priation, with interest thereon to date of judgment: *Daniels v. C. I. & N. R. Co.*, 41-52.

The phrase "owner of any real estate," includes a mortgagee, and if not made a party to the proceedings, he is not bound thereby: *Severin v. Cole*, 38-463.

These proceedings are not applicable as against foreign corporations: *Holbert v. St. L. K. C. & N. R. Co.* 45-23. (But see the amendment made in § 1241 by 17th G. A., ch. 126.)

SEC. 1245. The application to the sheriff shall be in writing, and the free holders appointed shall be the commissioners to assess all damages to the owners of real estate in said county, and said corporation, or the owner of any land therein, may, at any time after their appointment, have the damages assessed in the manner herein prescribed by giving the other party five days' notice thereof in writing, specifying therein the day and hour when such commissioners will view the premises, which shall be served in the same manner as original notices.

Where a mortgage upon the property appears of record, notice must be given to the mortgagee, or he will not be bound by the proceedings: *Sererin v. Cole*, 38-463; and see *Cochran v. Ind. Sch. Dist.*, &c., 50-663.

SEC. 1246. If the owner of any lands is a minor, insane, or other person under guardianship, the guardian of such minor, insane or other person, may, under the direction of the circuit judge, agree and settle with said corporation for all damages by reason of the taking of such lands for any of the purposes aforesaid, and may give valid conveyances of such land.

SEC. 1247. If the owner of such lands is a non-resident of the county in which the same are situate, no demand of the right of way or other purpose for which such lands are desired, shall be necessary, except the publication of a notice which may be in the following form:

NOTICE.—For the appropriation of lands for railway purposes. To (here name each person whose land is to be taken or affected,) and all other persons having any interest in, or owning any of the following real estate, (here describe the land by its congressional numbers in tracts not exceeding one-sixteenth of a section, or, if the land consists of lots in a town or city, by the numbers of the lot and block.) You are hereby notified that the has located its railway over the above described real estate, and desires the right of way over the same, to consist of a strip or belt of land . . . feet in width, through the centre of which the centre line of said railway will run, together with such other land as may be necessary for bermes, waste banks, and borrowing pits, and for wood and water stations, (or desires the same for the purposes mentioned in sections twelve hundred and forty-two, and twelve hundred and forty-three of this chapter, as the case may be) and unless you proceed to have the damages to the same appraised on or before day of, A. D. 18 . . . , (which time must be at least four weeks after the first publication of the notice,)

Jury to assess
all damages in
county: notice
of meeting.
R. § 1318.

Minor or insane
owner.
R. § 1316.

Notice to non-
resident owner.
13 G. A. ch., 62,
§§ 1, 2, 3.

said company will proceed to have the same appraised on the.... day of, (which must be at least eight weeks after the first publication of the notice,) at which time you can appear before the appraisers that may be selected.

..... Railway Company.

By attorney, or agent.

Where proceedings were based up- | being made to appear, the proceed-
on the assumption that the owner | ings were not irregular: *Everett v.*
was a non-resident and unknown on | *C. R. & M. R. R. Co.*, 28-417.
certiorari, held, that the contrary not |

SEC. 1248. Said notice shall be published in some newspaper Notice pub-
in the county, if there be one, if there is none, then in a news- lished.
paper published in the nearest county through which the proposed
railway is to run, for at least eight successive weeks prior to the
day fixed for the appraisement at the instance of the corporation. Same, § 3.

SEC. 1249. At the time fixed in either aforesaid notices, the Appraisement:
appraisement may be made and returned in tracts larger than how made and
forty acres, and all the lands appearing of record to belong to one returned.
person and lying in one tract may be included in one appraisement Same, § 4.
and return, unless the agent or attorney of the corporation,
or the commissioners, has actual knowledge that the tract does not
belong wholly to the person in whose name it appears of record; and
in case of such knowledge, the appraisement shall be made of the
different parcels, as they are known to be owned.

SEC. 1250. If it appears from the finding of the commissioners Where dwell-
that the dwelling-house, out-house, orchard, or garden, of the ing house, gar-
owner of any land taken will be overflowed or otherwise injuri- den, or orchard
ously affected by any dam or reservoir to be constructed under is affected.
section twelve hundred and forty-two of this chapter, such dam 12 G. A. ch. 117,
shall not be erected until the question of such overflowing or other § 3.
injury has been determined upon appeal in favor of the corpora-
tion.

SEC. 1251. In case of the death, absence, neglect, or refusal, Talesmen.
of any of said freeholders to act as commissioners as aforesaid, the R. § 1319.
sheriff shall summon other freeholders to complete the panel.

SEC. 1252. The corporation shall pay all the costs of the Costs: how
assessment made by the commissioners, and those occasioned by paid.
the appeal, unless on the trial thereof a less amount of damages is R. § 1317.
awarded than was allowed by the commissioners. 14 G. A. ch. 119.

If on the trial of an appeal by the to him, but may distribute them ac-
land-owner, a less amount of dam- cording to the general rules of law,
ages is given than was awarded by without reference to this section:
the commissioners, the court is not Jones v. Mahaska, &c., Coal Co.,
bound to tax all the costs of appeal 47-35.

SEC. 1253. The report of the commissioners, where the same Commissioners' report may be
has not been appealed from, and the amount of damages assessed recorded.
and costs have been deposited with the sheriff, or, if an appeal is 13 G. A. ch. 125,
taken and the amount of damages assessed on the trial thereof has § 1.
been paid to the sheriff, may be recorded in the record of deeds
in the county where the land is situate, and such record shall be
presumptive evidence of title in the corporation to the property so
taken, and shall constitute constructive notice of the rights of such
corporation therein.

The company cannot be compelled to pay the damages assessed and take the right of way, but may waive the rights acquired by the proceedings, being liable, however, for costs, and any damages actually suffered by the land owner: *Gear v. D. & S. C. R. Co.*, 20-523.

APPEALS.

How taken.
R. & 1317.

SEC. 1254. Either party may appeal from such assessment of damages to the circuit court within thirty days after the assessment is made, by giving the adverse party, or, if such party is the corporation, its agent or attorney, and the sheriff, notice in writing that such appeal has been taken; the sheriff shall thereupon file a certified copy of so much of the appraisement as applies to the part appealed from, and said court shall thereupon take jurisdiction thereof and try and dispose of the same as in actions by ordinary proceedings. The land owner shall be plaintiff and the corporation defendant.

On appeal the question of damages is to be determined upon its merits, and the regularity of prior proceedings, such as the selection of commissioners, etc., is not to be called in question. That can only be done by *ceteriorari*: *M. & M. R. Co. v. Rousseau*, 8-373; and see, *Runner v. City of Keokuk*, 11-543. The assessment of damages upon appeal is to be made without any reference to that appealed from: *Hahn v. C. O. & St. J. R. Co.*, 43-333.

The notice of appeal is presumptive evidence of an assessment from which an appeal can be taken: *Ibid.*

An appeal by the land owner from the assessment of the commissioner, cures any defect in regard to giving

notice of the assessment to such owner: *Borland v. M. & M. R. Co.*, 8-148.

In the proceedings on appeal an offer to confess judgment may be made with the consequences provided in § 2893: *Harrison v. Iowa Midland R. Co.*, 36-323.

The company may dismiss the proceedings at any time before judgment upon payment of costs: *B. & M. R. Co. v. Sater*, 1-421.

It would seem that a land owner appealing need not give bond; but even if that be necessary, the failure to give bond at the time the appeal is taken ought not to work the dismissal of the appeal: *Robertson v. Eldora R. & C. Co.*, 27-245.

Not to delay
work if amount
assessed is de-
posited with
sheriff.
R. & 1317.

SEC. 1255. An appeal shall not delay the prosecution of the work upon said railway, if said corporation pays or deposits with the sheriff the amount assessed by the commissioners; said sheriff shall not pay such deposit over to the person entitled thereto after the service of notice of an appeal, but shall retain the same until the determination thereof.

The right of the owner to receive the amount so deposited is suspended until the appeal is decided. The property is not taken, in an absolute sense, until the final assessment is paid, and the section is, therefore, not unconstitutional: *Peterson v. Ferrey*, 30-327.

SEC. 1256. An acceptance by the land owner of the damages awarded by the commissioners shall bar his right to appeal.

So held, before there was any such statutory provision: *M. & M. R. Co.*

Trial of: Judg-
ment.

SEC. 1257. On the trial of the appeal, no judgment shall be rendered except for costs; the amount of damages shall be ascertained and entered of record, and, if no money has been paid or deposited with the sheriff, the corporation shall pay the amount so ascertained, or deposit the same with the sheriff before entering upon the premises.

Under the Revision (which contained no similar provision), held, that where a general judgment was rendered against the company, on appeal, it could have no greater effect than an assessment of damages as contemplated by the statute: *Gear v.*

D. & S. C. R. Co., 20-523.

Interest may be allowed on the damages awarded, from the time of condemnation, provided such damages are greater than as found by the sheriff's jury: *Hartshorn v. B. C. R. & N. R. Co.*, 52-613.

SEC. 1258. If, on the trial of the appeal, the damages awarded by the commissioners are increased, the corporation shall pay or deposit with the sheriff the whole amount of damages awarded before entering on, or, in any manner whatever, using or controlling the premises. And said sheriff, upon being furnished with a certified copy of such assessment, may remove said corporation, its agents, servants, or contractors, from said premises unless the amount of the assessment is forthwith paid or deposited with him.

Where the amount of damages awarded by the commissioners is paid to the sheriff, and the company enters upon the land, if upon appeal by the land-owner a larger sum is

awarded, the company may be enjoined from further use of the property until it pays such further sum:

Richards v. D. V. R. Co., 18-259.

SEC. 1259. If the amount of the damages awarded by the commissioners is decreased on the trial of the appeal, the amount assessed on the trial of such appeal only shall be paid the land owners.

RIGHT OF WAY FOR CHANNELS AND DITCHES.

[Eighteenth General Assembly, Chapter 191.]

SEC. 1. In all cases where any railroad corporation, organized under the laws of this state or any other state, owning or operating a line of railroad within this state, would have the right at this time, by procuring the right of way from the land-owner, to dig a channel or cut a ditch in such manner as to change and straighten the course of a stream too frequently crossed by its road, or to protect the right of way, and road-bed, or promote the safety and convenience of the operation of the road, such railroad company may condemn the right of way as provided in the next section.

SEC. 2. Any such railroad corporation desiring the right of way for any of the purposes contemplated in the preceding section, where its officers and the land-owner cannot agree upon the compensation to be paid him, or when he refuses to grant the right of way, may cause to be condemned, of land belonging to such person a strip or belt of such reasonable width as may be necessary for the channel or ditch so desired, by pursuing in all respects, as near as may be, and so far as applicable, the provisions of law for the condemnation of real estate for right of way for said railroads, as provided in sections twelve hundred and forty-one, twelve hundred and forty-two, twelve hundred and forty-three, twelve hundred and forty-four, twelve hundred and forty-five, twelve hundred and forty-six, twelve hundred and forty-seven, twelve hundred and forty-eight, twelve hundred and forty-nine, twelve hundred and fifty, twelve hundred and fifty-one, twelve hundred and fifty-two and twelve hundred and fifty-three of the code of 1873.

Appeal. SEC. 3. Either party may appeal from such assessment in the manner provided for appeals from the assessment of the sheriff's jury in the condemnation of real estate for right of way for railroads, and sections twelve hundred and fifty-four, twelve hundred and fifty-five, twelve hundred and fifty-six, twelve hundred and fifty-seven, twelve hundred and fifty-eight, and twelve hundred and fifty-nine of the code shall be applicable to such appeal.

Intent of the act declared. SEC. 4. The true intent of this act is not to create in favor of a railroad corporation any additional right to divert a water-course from its natural channel, but simply to give the right to condemn the land necessary for the right of way in all cases where by conveyances to the railroad corporation it would have the right to dig such channels or ditches; *provided*, that nothing herein shall permit any railroad company to turn the channel of any stream off of any cultivated or pasture or meadow lands, when said stream only touches said lands at one point, unless it be by the consent of the owner of said land.

Proviso.

By railway corporations of right of way.
13 G. A. ch. 91,
§ 1.

SEC. 1260. In any case where a railway constructed in whole or in part, has ceased to be operated or used for more than five years, or in any case where the construction of a railway has been commenced by any corporation or person, and work on the same has ceased and has not been in good faith resumed for more than five years, and the same remains unfinished, or where any portion of such railway has not been operated for four years last past, and the rails and rolling stock have been wholly removed therefrom, it shall be deemed and taken that the corporation or person thus in default has abandoned all right and privilege over so much as remains unfinished, or from which the rails and rolling stock have been wholly removed, as aforesaid, in favor of any other corporation or person which may enter upon such abandoned work, as provided in section twelve hundred and sixty-one of the code; *provided, however*, that if said road-bed or right of way, or any part thereof, shall not be used or operated for a period of eight years, or in any case where the construction of a railway has been commenced by any corporation or person, and work on the same has ceased and has not been in good faith resumed by any corporation or person for a period of eight years, the land and the title thereto shall revert to the owner of the section, subdivision, tract or lot from which it was taken; and *provided, further*, that the provisions of this act shall not apply to any railroad having a portion of its track laid with a wooden rail.

[The original, as amended by 15th G. A., ch. 65, was repealed and the foregoing substituted; 18th G. A., ch. 15.]

The easement acquired by a railroad company, is acquired to public use, and is in the nature of a grant from the state for the uses and purposes provided by law, and when the company fails to carry out the purposes of the grant, the legislature may transfer the easement to another company upon making compensation to the former company: *Noll v. D.*

B. & M. R. Co., 32-66.

The easement being acquired by express grant, is not barred by a failure to use the same for ten years, and a possession of the property, during that time, by the original owner, in the absence of any act of his preventing the use: *Ibid*; *Barlow v. C. R. I. & P. R. Co.*, 29-276.

SEC. 1261. In every such case of abandonment, any other corporation may enter upon such abandoned work, or any part thereof, and acquire the right of way over the same and the right to any unfinished work or grading found thereon and the title thereto, by proceeding in the manner provided, and conforming in all particulars as near as may be to the provisions of this chapter; but parties who have previously received compensation in any form for the right of way on the line of such abandoned railway, which has not been refunded by them, shall not be permitted to recover the second time, but the value of such road-bed and right of way, excluding the work done thereon, when taken for a new company, shall be assessed to the former company or its legal representative.

How right of way may be condemned.
Same, § 2.

CROSSING HIGHWAYS.

SEC. 1262. Any such corporation may raise or lower any turnpike, plank-road, or other highway, for the purpose of having its railway cross over or under the same; and in such cases said corporation shall put such highway, as soon as may be, in as good repair and condition as before such alteration at such place of crossing.

By railways:
rights and duty
of.
R. § 1321.

[As amended by substituting "cross" for "pass" in the third line, and adding the last five words; 15th G. A., ch. 47.]

This section, as amended, does not warrant the construction placed upon it, as it originally stood, by *Milburn v. City of Cedar Rapids*, 12-246, and other cases. It cannot now be construed as authorizing railway companies to construct and operate their railroads over and upon public highways.

ways: *Stanley v. City of Davenport*, 54-463.

As it originally stood, "over" was construed to mean "upon," and it was held to authorize the construction of a railway along a highway or upon the streets of a city. See, generally, notes to § 464.

SEC. 1263. If the supervisor, trustees, city council, or other person having jurisdiction over such highway require further or different repairs or alterations made thereon, or, if the same, in their opinion, is unsafe, they shall give notice thereof in writing to any agent or officer of the corporation, and if the parties are unable to agree respecting the same, either may apply by petition, setting out the facts, to the circuit court, or judge thereof, and such court or judge shall cause reasonable notice to be given the adverse party of the application; the petition shall be filed in the clerk's office, and may be answered as in other cases. The court shall determine the matter in a summary way and make the necessary orders in relation thereto, giving such corporation a reasonable time to comply therewith, and upon failure to do so, said court may enjoin the corporation from using so much of its road as interferes with any such highways, and the court may award costs in favor of the prevailing party.

Further repairs required by supervisors or council of cities: proceedings in such cases.
R. §§ 1322-3.

SEC. 1264. Every such corporation when employed in raising or lowering any highway, or in making any other alteration by means of which the same may be obstructed, shall provide and keep in good order suitable temporary ways to enable travelers to avoid or pass such obstructions.

Temporary ways.
R. § 1324.

Crossings so constructed as not to impede travel.
R. § 1325.

Bridges.
R. § 1326.

Damages.
R. § 1327.

Cattle guards.
R. § 1329.

Right of way granted other works of internal improvement.
R. §§ 1278-88.

Cities and towns.

SEC. 1265. Any such corporation may construct and carry its railway across, over, or under any railway, canal, or water course, when it may be necessary in the construction of the same; and in such cases said corporation shall so construct its crossings as not unnecessarily to impede the travel, transportation, or navigation upon the railway, canal, or stream so crossed; said corporation shall be liable for the damages occasioned by any corporation or party injured by reason of said crossing.

SEC. 1266. Every such corporation shall maintain and keep in good repair all bridges, with their abutments, which it may construct for the purpose of enabling its railway to pass over or under any turnpike, highway, canal, water-course, or other way.

SEC. 1267. Every such corporation shall be liable for all damages sustained by any person in consequence of any neglect of the provisions of this chapter.

The provisions of this section do not extend the liability of the corporation to the acts of those not its

agents or servants: *Callahan v. B. & M. R. R. Co.*, 23-562.

SEC. 1268. When any person owns land on both sides of any railway, the corporation owning the same, shall, when requested so to do, make and keep in good repair one cattle guard and one causeway or other adequate means of crossing the same, at such reasonable place as may be designated by the owner.

The obligations imposed upon the company to fence, and to provide private crossings, are correlative, and if it does each as well as it can, consistently with the other, it is not liable: *Henderson v. C. R. I. & P. R. Co.*, 39-220.

The company need not provide a crossing unless the land owner requires it: *S. C.*, 48-216.

Under Rev., § 1329, held, that railway companies had a right to construct fences at private crossings, but must provide the same with gates: *McKinley v. C. R. I. & P. R. Co.*, 47-76, 78.

What is a sufficient causeway or crossing: See *Gray v. B. & M. R. R. Co.*, 37-119.

The company is only liable for negligence in failing to put up the bars at a private crossing, which have been left down, after acquiring knowledge of their condition, or in not ascertaining their condition, and the burden of proving such negligence is upon the plaintiff: *Perry v. D. S. W. R. Co.*, 36-102. The fact that the bars are left down by the land owner, will not as to third persons discharge the company of its obligation to keep them closed: *Bartlett v. D. & S. C. R. Co.*, 20-188; but the land owner could not recover for injuries resulting therefrom, and might be liable to a third person injured by such bars being open: *Russell v. Hanley*, 20-219.

SEC. 1269. When any corporation or person desires to construct a canal, turnpike, graded, macadamized, or plank road, or a bridge, as a work of public utility, although for private profit, such corporation or person may take such private property as may be deemed necessary for right of way, not exceeding one hundred feet in width, by pursuing the course prescribed in this chapter, all the provisions of which are made applicable in similar cases.

SEC. 1270. Cities and incorporated towns may exercise the powers herein conferred for the purpose of taking private property for streets, alleys, and market-house sites.

STATE MAY CONDEMN.

SEC. 1271. Whenever in the opinion of the governor, the public interest requires the taking of any real estate for the making or construction of any drains, sewers, yards, walls, buildings, or other improvements or conveniences for the use or benefit of the penitentiaries, hospitals for the insane, or any other institution of the state, upon or across lands being private property, the same proceedings may be had in the name of the state as provided in this chapter, and for that purpose the state shall be considered a person, and the proceedings shall be conducted by the district attorney of the district in which the land is situated, whenever directed by the governor, or the governor may appoint some other person for that purpose.

[A substitute for the original section, 16th G. A., ch. 75.]

SEC. 1272. Whenever the amount of the damages contemplated in the preceding section is finally determined, the sheriff or clerk, as the case may be, shall certify the amount thereof to the governor, who shall, by an order indorsed thereon, direct the payment of the same, and the auditor of state shall issue a warrant on the treasury for the amount, which shall be paid with any money not otherwise appropriated. When the money is paid to the sheriff or person entitled thereto, the state, through its proper agent or officer, may enter on the premises and construct the desired work.

STREET RAILWAYS OVER HIGHWAYS.

[Eighteenth General Assembly, Chapter 32.]

SEC. 1. Any street railway company now or hereafter organized under the laws of this state to operate a street railway in any city or incorporated town in this state, for the purpose of extending its railway beyond the limits of such city or town, may locate, build and operate, either by animal or motor power, its road over and along any portion of a highway which is of a width of one hundred feet or more. In such cases said company as soon as practicable shall put said highway in as good repair and condition as the same was before its use for the purpose herein contemplated, and boards of supervisors are hereby authorized to accept for highway purposes under this act conveyances of land adjoining any highway or part thereof sufficient to increase said highway to the width of one hundred feet.

SEC. 2. Unless the owners of the land abutting each *site* [side] of said highway shall consent to its use as contemplated in section one said railway company shall pay all damages sustained by such land-owners by reason of building said road, which damages shall be ascertained and paid in the same manner as provided for taking private property for works of internal improvement. Said company shall also be liable for all damages sustained by any one, resulting from the carelessness of its officers, agents, or servants, in the construction or operation of its railway.

How done,
and for what
purpose.
12 G. A. ch. 189,
§ 1, 2.

Damages:
how certified
and paid.
Same, § 4.

Right of way
for.

Condemnation
Damages.

ESTABLISHMENT OF PUBLIC WAYS TO MINES AND STONE QUARRIES.

[Fifteenth General Assembly, Chapter 34.]

- Quarry or mine owners may have public way established.**
- Same to be fenced.**
- Proceedings to condemn right of way.**
- Sheriff to appoint appraisers.**
- Their report.**
- Payment of award.**
- Provisions in code: §§ 1245—1268 applied to this act.**
- No title conferred by proceedings.**
- Person condemning may establish railway.**
- SEC. 1.** Any person, copartnership, joint-stock association, or corporation, owning, leasing, or possessing any lands having thereon or thereunder any coal, stone, lead, or other mineral, may have established over the land of another a public way from any stone-quarry, coal, lead or other mine, to any railway or highway, not exceeding (except by the consent of the owner of the land to be taken) fifty feet in width. When said road shall be constructed, it shall, when passing through enclosed lands, be fenced on both sides by the person or corporations causing said road to be established.
- SEC. 2.** If the owner of any real estate, necessary to be taken for the purposes mentioned in this act, refuse to grant the right of way, or if such owner and the person, partnership, joint-stock association, or corporation seeking to have such way established, cannot agree upon the compensation to be paid for the same, the sheriff of the county in which said real estate may be situated shall, upon the application of either party, appoint six disinterested freeholders of the county, not interested in a like question, who shall inspect said real estate, and assess the damage which said owner will sustain by the appropriation of said land for such public way, and make *and* report in writing to the sheriff of said county, and if the applicant for such public way shall at any time before entering upon said real estate, for the purpose of constructing such way, pay to said sheriff, for the use of said owner, the sum so assessed and returned to him, as aforesaid, said highway may be at once constru[ct]ed and maintained over and across said premises.
- SEC. 3.** In proceeding under this act, the application to the sheriff, the duty of commissioners, the time and manner of assessing the damages, the giving of notice thereof to residents and non-residents, the power of guardians to settle and convey, the making and returning of appraisement, the selection of talesmen, the payment of the costs of assessment, the report of the commissioners, the recording thereof, the right of appeal, the proceedings relating thereto, the result of non-user, the rights and duties as to other highways, are and shall be the same as provided in the sections of the code numbered twelve hundred and forty-five to and including twelve hundred and sixty-eight, and the provisions of all of said sections, so far as applicable, are declared to be a part of this act, except that the report of the commissioners, and record thereof, shall confer no title to the applicant for the land taken for the highway, but shall be presumptive evidence of the establishment of such way.
- SEC. 4.** Any owner, lessee, or possessor of lands having coal, stone, lead, or other mineral therein, who has paid the damages assessed for highways established under this act, may construct, use, and maintain a railway on such way, for the purpose of reaching and operating any quarry or mine on such land and of transporting the products thereof to market. In the giving of the notices required by this act, the applicant shall state whether a railway is to be constructed and maintained on the way sought to

be established ; and if it be so stated the jury shall consider that to be stated in fact in the assessment of damages.

No authority is given by this act to construct a *private* way. The way, when condemned, is to be a *public* one, and the act is therefore not invalid: *Jones v. Mahaska, &c.*, Coal Co., 47-35. 11 G. A., ch. 127, which provided for

the establishment of *private* ways was held unconstitutional, but, *held arguendo*, that to afford an outlet to a citizen, or access to mineral wealth, a public way might properly be established: *Bankhead v. Brown*, 25-340.

RIGHTS OF RIPARIAN OWNERS.

[Fifteenth General Assembly, Chapter 35.]

SEC. 1. All owners and lessees of lands, or lots, situate upon the Iowa banks of the Mississippi and Missouri rivers, upon which property there is now, or may hereafter be, carried on any business which is in any way connected with the navigation of said rivers, or to which the said navigation is a proper or convenient adjunct, are hereby authorized to construct and maintain, in front of their said property, piers, cribs, booms, and other proper and convenient erections and devices for the use of their respective pursuits and the protection and harbor of rafts, logs, floats, and other water-crafts; *provided*, that the same present no material or unreasonable obstruction to the navigation of the stream, or to a similar use of adjoining property.

SEC. 2. It shall not be lawful for any person or corporation to construct or operate any railroad or other obstruction between such lots or lands and either of said rivers, or upon the shore or margin thereof, unless the injury and damage to such owners occasioned thereby shall be first ascertained and compensated in the manner provided by chapter 4, title 10 of the code.

Whether § 1 is in conflict with act of congress (U. S. Rev. Stat. § 5254) relating to the construction of cribs, piers, etc., on the Mississippi river, *quare*. But if it is, the second section is not thereby rendered void. If a riparian owner is engaged in business connected with the navigation of the river, it is not essential to his

right to recover, under this section, that he should have erected a crib or pier in front of his property. The rule recognized in *Tomlin v. D. B. & M. R. Co.*, 32-106, is no longer applicable, Rev. § 1328 being now repealed: *Renwick v. D. & N. W. R. Co.*, 49-664.

Land-owners upon the Mississippi and Missouri may erect piers, cribs, booms, &c., when.

Proviso: not to obstruct navigation.

Owners to receive compensation for railroad right of way.

CHAPTER 5.

OF RAILWAYS.

ORGANIZATION.

SECTION 1273. Any corporation organized under the laws of this state for the purpose of constructing and operating a railway, may, with the assent of two-thirds of all the stockholders in interest, change the corporate name thereof. But no change in the name of any such corporation shall be deemed complete until the

Change of corporate name: how made and effect of.
10 G. A. ch. 44, §§ 3, 4.

president and secretary thereof shall file in the office of the secretary of state, a statement, under oath, showing the assent of the stockholders to such change, and the new name adopted, and a certified copy of the proceedings had by the corporation and stockholders in relation thereto as the same appears in the records thereof; from the time of such filing, the corporation by its new name shall be entitled to all the rights, powers, and franchises that it possessed under the old name, and by the new name shall be liable upon all contracts and obligations of every kind and description entered into by or binding upon such corporation by or under its old name to the same extent and manner as if no change in the name of such corporation had been made.

SEC. 1274. The secretary of state shall immediately record in the proper book in his office the matters filed under the preceding section, and make intelligible references to the record of the articles of incorporation as originally recorded.

SEC. 1275. Any such corporation may join, intersect, and unite its railway with the railway of any other corporation at such point on the boundary line of this state as may be agreed upon by such corporations. And with the assent of three-fourths in interest of all the stockholders, may, by purchase or sale, or otherwise, merge and consolidate the stock, property, franchises, and liabilities of such corporations, making the same one joint stock corporation upon such terms as may be agreed upon not in conflict with the laws of this state.

SEC. 1276. Any such corporation which has or may construct its railway so as to meet or connect with any other railway in an adjoining state at the boundary line of this state, shall have power to make such contracts and agreements with the corporations controlling such railways in an adjoining state, for the transportation of freight and passengers, or for the use of its railway by such foreign corporation, as the board of directors may see proper.

SEC. 1277. Any such corporation organized for the purpose of constructing a railway from a point within the state may construct or extend the same into or through any other state under such regulations as may be prescribed by the laws of such state; and the rights and privileges of such corporation over said extension in the construction and use thereof, and in controlling and applying the assets, shall be the same as if its railway was constructed wholly within this state.

SEC. 1278. All the duties and liabilities imposed upon corporations owning or operating railways by this chapter, shall apply to all lessees or other persons owning or operating such railways as fully as if they were expressly named herein, and any action which might be brought, or penalty enforced, against any such corporation by virtue of any provision of this chapter, may be brought or enforced against such lessees or other persons.

The obligation to fence, as provided in § 1289, rests upon the lessee as much as upon the lessor, and that section applies to damages done by the trains of lessee, although as between it and the lessor, the duty of fencing rests upon the latter: *Clary v. Iowa Midland R. Co.*, 37-344. Where the owner and a lessee each runs trains over the road, each is liable for stock injured by its own trains by reason of the failure to fence: *Stephens v. D. & St. P. R. Co.*, 36-371.

The remedy here given against the lessee is merely cumulative, and the

Record made
by secretary of
state.

May intersect,
join, merge
and consoli-
date.
R. § 1332.

May connect
and make con-
tracts with ref-
erence thereto.
R. § 1334.

Extension of
into other
states.
R. § 1333.

Duties and lia-
bilities apply to
lessees.
12 G. A. ch. 79;
ch. 172. § 1.

right of action against the company | *v. B & S. W. R. Co.*, 42-546.
owning the road still exists: *Bouer*

SEC. 1279. The offices of secretary and treasurer, or assistant treasurer and general superintendent, of every railway corporation organized under the laws of this state, shall be kept where the principal place of business of such corporation is to be, in which offices the original record, stock, and transfer books, and all the original papers and vouchers of such corporation shall be kept; and such treasurer or assistant treasurer shall keep a record of the financial condition of the corporation which may be inspected at all reasonable hours by any stockholder, or any committee appointed by the general assembly. Such corporation may keep in any other state a transfer office, in which may be kept a duplicate transfer book; but no transfer of shares of stock shall be legal or binding until the same is entered in the transfer book kept in this state. The secretary and treasurer, or assistant treasurer and general superintendent aforesaid shall reside in this state.

SEC. 1280. Every such corporation shall, annually, under the oath of the president, in the month of January, make a full report of the condition of its affairs to the secretary of state, and shall have the same published in some newspaper printed in the place of its general business office, showing the amount of the capital stock of such corporation, and the amount paid thereon, the amount of bonds issued, and how secured, and all other indebtedness; the length of such railway when completed, and how much is built and in use; the number of acres of land donated or granted to them, by whom and what disposition has been made of said grants or donations, the gross amount of receipts and how disbursed, the net amount of profit and the dividends made, with such other facts as may be necessary to a full statement of the affairs and condition of such corporation, and the secretary of state shall present the said report to the general assembly.

SEC. 1281. In case any such corporation shall neglect to make such report as required in the preceding section, any stockholder may file his petition in the district or circuit court in the county where the principal business office is kept, stating that said report has not been made, and praying that an order may issue against the corporation commanding it to make said report; said petition, shall be under oath and filed at least ten days before the next term of the district or circuit court in said county, and notice thereof shall be given such corporation for the same length of time, and in the same manner as is now required to be given in other suits in the district or circuit court, and upon the filing of such petition, the clerk shall issue such order and make the same returnable at the next term of the district or circuit court in said county, and costs shall be recoverable by either party as in ordinary actions.

SEC. 1282. If it appears such report has not been filed, the court shall, during the term, appoint three disinterested and competent persons near the place of the general business office of the corporation as an investigating committee, who shall examine into its affairs and report at as early a day as practicable its condition, in manner and form as prescribed in section twelve hun-

Officers of to
reside in the
state: office
books: transfer
of stock.
9 G. A. ch. 159,
§ 2. 6.

Annual report
of to be laid
before general
assembly.
Same, § 3.

District or cir-
cuit court may
by order com-
pel report to
be filed.
Same, § 4.

Same: exami-
nation ordered.
Same, § 5.

dred and eighty of this chapter; one copy of said report to be filed in the office of the clerk of the district court of the county where the proceedings are had, and one copy to be filed in the office of the secretary of state. The compensation for the services of such committee shall be paid by the corporation thus investigated, but it shall not exceed three dollars per day and mileage at the rate of ten cents per mile, counting one way.

OF STOCK AND DEBTS.

May issue bonds, borrow money, and execute mortgages.
R. # 1339.
10 G. A. ch. 20.

SEC. 1283. Any such corporation shall have power to issue its bonds for the construction and equipment of its railway, in sums not less than fifty dollars, payable to bearer or otherwise, and bearing interest at a rate not exceeding ten per cent per annum, and make the same convertible into stock, and may sell the same at such rates or prices as is deemed proper; if such bonds are sold below the par value thereof, they shall, nevertheless, be valid and binding, and no plea of usury shall be allowed such corporation in any action or proceeding brought to enforce the collection of said bonds; such corporation may also secure the payment of said bonds by executing mortgages or deeds of trust of the whole or any part of its property and franchises.

Mortgages may cover after acquired property.
R. # 1340.

SEC. 1284. Said mortgages or deeds of trust, may, by their terms, include and cover, not only the property of the corporation making them at the time of their date, but property both real and personal which may thereafter be acquired, and shall be as valid and effectual for that purpose, as if the property were in possession at the time of the execution thereof.

How executed, recorded, and effect of.
R. # 1341.

SEC. 1285. Said mortgages or deeds of trust shall be executed in such manner as the articles of incorporation or by-laws of the corporation may provide, and shall be recorded in the office of the recorder of each county through which the railway of the corporation may run, or in which any property mortgaged or conveyed by such deeds of trust may be situated, and shall be notice to all the world of the rights of all parties under the same, and for this purpose, and to secure the rights of mortgagees or parties interested under deeds of trust so executed and recorded, the rolling stock and personal property of the company properly belonging to the road and appertaining thereto, shall be deemed a part of the road, and said mortgages and deeds so recorded, shall have the same effect both as to notice and otherwise, as to the personal, as to real estate covered by them.

May issue preferred stock.
10 G. A. ch. 44,
1.
11 G. A. ch. 102.

SEC. 1286. Any such corporation, with the assent of two-thirds of all the stockholders in interest, may issue in payment of debts, preferred stock, not exceeding ten thousand dollars for each mile of railway constructed, which stock shall be entitled to such dividends as the directors of the corporation may determine, not exceeding eight per cent. per annum, if the same is earned in any one year after payment of all interest on the bonds of the corporation, before any dividend is made to the common stock.

[Fifteenth General Assembly, Chapter 20.]

Any railway corporation which has no surplus, after paying its running expenses, with which to pay the interest on its bonded

indebtedness, with the assent of its bondholders, in addition to the right conferred by section one thousand two hundred and eighty-six of the code, may, with the assent of two-thirds of its stockholders, issue its preferred stock, at par, to an amount equal to and not exceeding its bonded indebtedness, in exchange for its said bonded indebtedness. The said stock shall be entitled to such dividends from its net profits as the directors of the corporation may determine, not exceeding eight per cent. per annum, if the same is earned in any one year, after payment of all interest on the indebtedness of the corporation, before any dividend is made to the common stock.

Railway corporations may issue preferred stock to pay bonded debt.

SEC. 1287. Such preferred stock, and any income or mortgage bond of the corporation, shall, at the option of the holder, be convertible into common stock in such manner and on such terms as the board of directors thereof may prescribe; but the aggregate amount of the common and preferred stock shall not exceed the total amount of stock which the corporation may be by law, or the articles of incorporation thereof, authorized to issue.

Mortgages and preferred stock convertible into common stock.

10 G. A. ch. 41,

§ 2

OF THE TRACK.

SEC. 1288. Every corporation constructing or operating a railway, shall make proper cattle guards where the same enters or leaves any improved or fenced land, and construct at all points where such railway crosses any public highway, good, sufficient, and safe crossings and cattle guards, and erect at such points at a sufficient elevation from such highway to admit of free passage of vehicles of every kind, a sign, with large and distinct letters placed thereon, to give notice of the proximity of the railway and warn persons of the necessity of looking out for the cars; and any railway company neglecting or refusing to comply with the provisions of this section, shall be liable for all damages sustained by reason of such neglect and refusal, and in order for the injured party to recover, it shall only be necessary for him to prove such neglect or refusal.

Cattle guards: crossings: signs at: penalty.
R. § 1331.
9 G. A. ch. 163,
§ 3, 4, 5.

Cattle guards are to be constructed not only where the track goes through outside fences but also at division fences: *Smith v. C. C. & D. R. Co.*, 38-518.

let v. D. & S. C. R. Co., 20-183.
(But see § 1288).

The provision as to signs at crossings only renders the company liable for damages sustained by reason of the failure to erect such sign: *Lang v. Holiday Creek R. &c., Co.*, 49-469.

The failure to erect a sign renders the company absolutely liable in a case wherein it is shown that a person was injured at a crossing. Evidence of the injury and of the company's neglect to erect the sign establishes its liability, and it is not necessary for plaintiff to show his own care. (*Dictum*): *Payne v. C. R. I. & P. R. Co.*, 44-236.

Under Rev. § 1331, which did not contain the words at the end of the section, following "refusal," held, that proof of failure to erect a sign estab-

Where the track passes through the lands of two owners, fenced in common, and subsequently a division fence is constructed, it is the duty of the company upon notice to put in a cattle guard, and it will be liable for the value of crops destroyed by reason of the failure to do so: *Donald v. St. L., K. C. & N. R. Co.*, 44-157.

It is the duty of the company to repair crossings and keep them in a safe condition: *Farley v. C. R. I. & P. R. Co.*, 42-234.

There is nothing in this section requiring a company to make cattle guards at a private crossing: *Bart-*

lished negligence on the part of the company, but did not relieve plaintiff of the necessity of showing that his own negligence did not contribute to the injury: *Dodge v. B. C. R. & M. R. Co.*, 34-276; *Correll v. B. C. R. & M. R. Co.*, 38-120; *Payne v. C. R. I. & P. R. Co.*, 39-523; *S. C.*, 44-236.

Liability for stock killed where road is not fenced.
Same, § 6.
14 G. A. ch. 128.

Depot grounds.

Damages by fire.

SEC. 1289. Any corporation operating a railway, that fails to fence the same against live stock running at large at all points where such right to fence exists, shall be liable to the owner of any stock injured or killed by reason of the want of such fence for the value of the property or damage caused, unless the same was occasioned by the wilful act of the owner or his agent. And, in order to recover, it shall only be necessary for the owner to prove the injury or destruction of his property; and if such corporation neglects to pay the value of or damage done to any such stock within thirty days after notice in writing, accompanied by an affidavit of such injury or destruction, has been served on any officer, station or ticket-agent employed in the management of the business of the corporation in the county where the injury complained of was committed, such owner shall be entitled to recover double the value of the stock killed or damages caused thereto; *provided*, that no law of this state, nor any local or police regulations of any county, township, city, or town, regulating the restraint of domestic animals, or, in relation to the fences of farmers or land owners, shall be applicable to railway tracks, unless so specifically stated in the law or regulation. The operating of trains upon depot grounds necessarily used by the company and public, where no such fence is built, at a greater rate of speed than eight miles per hour, shall be deemed negligence and render the company liable under this section.

And provided, further, that any corporation operating a railway shall be liable for all damages by fire that is set out or caused by operating of any such railway, and such damage may be recovered by the party damaged in the same manner as set forth in this section in regard to stock, except to double damages.

FENCING AT DEPOT GROUNDS AND HIGHWAYS: The company is not required to fence where it would not, in view of public convenience, be fit, proper or suitable for it to do so. Depot and station grounds may be left unenclosed when the business of the road and the interests of the public so require: *Latty v. B. C. R. & M. R. Co.*, 38-250; *Smith v. C. R. I. & P. R. Co.*, 34-506; *Davis v. B. & M. R. R. Co.*, 26-549; *Rogers v. C. & N. W. R. Co.*, 26-558; *Durand v. same, id.*, 559; and in the absence of proof of want of ordinary care, a company is not liable for stock killed on such grounds: *Packard v. Ill. Cent. R. Co.*, 30-474.

The burden is upon the company to show that the place where stock is injured and where there is no fence, is a portion of the station grounds. The fact that a switch is there maintained will not necessarily give it that character: *Comstock v. D. V. R. Co.*, 32-376.

It is negligence in the owner of cattle to allow them to frequent such place of danger: *Smith v. C. R. I. & P. R. Co.*, 34-516.

The provision making the company liable for stock killed on depot grounds by trains running at a greater rate of speed than eight miles an hour, applies only to cases where the stock is killed on such grounds: *Monahan v. K. & D. M. R. Co.*, 45-523.

The company is not required to fence where its track crosses a public highway, whether such highway be one *de jure*, or only *de facto*: *Snoard v. C. & N. W. R. Co.*, 33-326.

Where the right of way and a public highway intersect obliquely, the company should fence to the point where the highway crosses the track, and construct the cattle guard there, and not at the point where the highway intersects the right of way: *Andrew v. C. & N. W. R. Co.*, 30-107.

The company is bound to use ordinary and reasonable care to avoid in-

juring stock at points where it is not required to fence: *Whitbeck v. D. & P. R. Co.*, 21-103; *Balcom v. D. & S. C. R. Co.*, 21-102.

As to the right to fence at private crossings, see § 1268, and notes.

STOCK RUNNING AT LARGE: Before the enactment of this statute, it was held that to permit cattle to run at large did not impute negligence on the part of the owner, and that cattle would not be trespassers if found upon the unfenced track of a railway; that if the track was unfenced the company would be held to the use of ordinary care and diligence in running its trains to avoid injuring such stock, but if its track was fenced it would only be liable for injury resulting from gross or wilful negligence: *Russell v. Hanley*, 20-219; *Alger v. M. & M. R. Co.*, 10-268.

Stock which escapes from the enclosure of the owner upon the track of the company is "running at large": *Hinman v. C. R. I. & P. R. Co.*, 28-491; and so, too, is stock which is in a field through which the railway passes and where the company has failed to fence: *Swift v. N. M. R. Co.*, 29-243.

The words "running at large" mean, "not under control of the owner." A mule which had escaped from its owner and which he was unable to catch, *held*, to be running at large: *Hammond v. C. & N. W. R. Co.*, 43-168.

The company is only liable for injuries to stock "running at large," and not when it is in charge of the owner and being driven by him at the time of the injury: *Smith v. C. R. I. & P. R. Co.*, 34-96.

The company is liable for sheep and swine killed where it has failed to fence, although it is unlawful for such stock to be at large: *Spence v. C. & N. W. R. Co.*, 25-139; *Stewart et. same*, 27-282; *Fernow v. D. & S. W. R. Co.*, 22-528; and it is liable, in such case, even though it has constructed a fence sufficient to turn horses and cattle: *Fritz v. M. & St. P. R. Co.*, 34-337.

OBLIGATION TO REPAIR FENCES: Where the track has been properly fenced and the fence has been destroyed, the company is liable in case of a failure to use reasonable and ordinary diligence and care in rebuilding it. Reasonable time must be allowed: *McCormick v. C. R. I. & P. R. Co.*, 41-193.

Before liability for failure to repair will attach, the company must have

knowledge that it is out of repair (which knowledge may be shown by the lapse of such time as to afford reasonable presumption thereof), and a reasonable time thereafter to put it in repair: *Aylesworth v. C. R. I. & P. R. Co.*, 30-459.

The company having constructed a sufficient fence, is only liable for failure to use reasonable care and diligence in maintaining it: *Lemmon v. C. & N. W. R. Co.*, 32-151.

As to obligation to keep gates and bars at private crossings closed and in repair, see notes to § 1268.

AS TO DOUBLE DAMAGES: The provision allowing double damages is not in conflict with § 1 of the 14th amendment to the U. S. Const.: *Tredway v. S. C. & St. P. R. Co.*, 43-527.

No part of the double damages is a statute penalty in such sense as to bring an action therefor within the limitation of § 2529 ¶ 1. The limitation for such action is five years: *Koons v. C. & N. W. R. Co.*, 23-493.

The affidavit required to entitle a party to double damages may be made by any one acquainted with the facts: *Henderson v. St. L., K. C. & N. R. Co.*, 36-387.

The original of the affidavit of loss should accompany the notice, a copy is not sufficient: *McNaught v. C. & N. W. R.*, 30-336; *Campbell v. C. R. I. & P. R. Co.*, 35-314.

The notice and affidavit need not be separate. If the notice contains the statements necessary in the affidavit, and is sworn to, that is sufficient: *Mendell v. C. & N. W. R. Co.*, 20-9.

Service of the affidavit and notice should be made by delivering them to the agent of the company; it is not necessary to read them and deliver a copy: *Ibid.*

The written notice here contemplated is only necessary when double damages are sought: *Rodemacher v. M. & St. P. R. Co.*, 41-297.

Double damages can be recovered only when stock has been injured or killed "by reason of the want of such fence," and not when the jury results by reason of the company having fenced where it should not. *Davis v. C. R. I. & P. R. Co.*, 40-292.

WHO LIABLE: The lessee of a road is not contemplated by this act, (G. A., ch. 169. But see § 1278, a subsequent enactment.) It would seem that two or more individuals without corporate existence, who should build and operate a railroad,

would come within the spirit, if not the language of the act. *Liddle v. K. Mt. P. & M. R. Co.*, 23-378.

As to liabilities of lessee, see § 1278 and notes.

LIABILITY FOR FIRES: The provision making the company liable for damage by fire, etc., is not in conflict with the constitution: *Rodemacher v. M. & St. P. R. Co.*, 41-297.

Before the enactment of this provision it was held, that the burden was upon plaintiff to show negligence upon the part of the company in such cases, and proof of the injury alone was not sufficient to make out a *prima facie* case: *Gandy v. C. & N. W. R. Co.*, 30-420; and the effect of this provision is not to make the company absolutely liable for such damages, but to render the injury *prima facie* proof of negligence upon the part of the company, which may be rebutted by showing freedom from such negligence: *Smail v. C. R. I. & P. R. Co.*, 50-338.

IN GENERAL: This section is not in conflict with Const., art. 1, § 6, providing that all laws of a general

nature shall have a uniform operation: *Jones v. G. & C. U. R. Co.*, 16-6.

Where a horse, getting upon the track where it should have been fenced, but was not, and becoming frightened by a train, ran into a bridge and was thereby injured, held, that the company was liable: *Young v. St. L. K. C. & N. R. Co.*, 44-172.

Under this section the liability for stock killed exists, regardless of the negligence of the owner. It is only upon showing that the injury is the result of the *wilful act* of such owner or his agent, that the company is excused from liability: *Spence v. C. & N. W. R. Co.*, 25-139. Merely permitting an animal to run at large is not such "wilful act" as to defeat the owner's right to recover: *Stewart v. B. & M. R. R. Co.*, 32-361.

When stock is killed at a place where the company has failed to fence, it will be presumed, *prima facie*, that the injury occurred "by reason of the want of such fence": *Spence v. C. & N. W. R. Co.*, 25-139.

SEC. 1290. Whenever it becomes necessary in the construction of any railway to cross any other railway near the shore of the Mississippi river, each shall be so constructed and maintained at the point of crossing, so that the respective road-beds thereof shall be above high water in such river. But where such crossings occur within the limits of cities containing six thousand inhabitants as shown by the last preceding census, the city council of such cities may establish the grade at such crossings.

SEC. 1291. In all cases where taxes have been voted under chapter forty-eight, of twelfth general assembly, or chapter one hundred and two of thirteenth general assembly, to aid in the construction of any railway, or where said tax has been transferred under chapter eighty-one of the fourteenth general assembly, and said tax has been voted or transferred under any condition or contract with the railway company which the township may desire to have changed or modified, said township is hereby authorized upon agreement of its trustees with the railway company constructing said proposed railway, to submit to a vote of the electors of the township, the question whether the conditions or contract under which said tax was voted or transferred, shall be changed or modified, and said trustees, upon petition of one-third of the legal voters of the township, as shown by the vote cast at the last general election, asking such change or modification, shall order an election, submitting the agreement to the electors, at a special election called therefor, said election to be conducted in all respects as to notice and manner of holding, as the election at which the tax was originally voted.

Railway crossings near shore of Mississippi river.
14 G. A. ch. 33.

Terms and conditions on which taxes have been voted in aid of may be changed.

FOREIGN RAILWAY CORPORATIONS.

[Eighteenth General Assembly, Chapter 128.]

SEC. 1. Any railroad company organized, or created by, or under the laws of any other state, and owning and operating a line or lines of railroad in such state, is hereby authorized to extend and build its road or any branches thereof into the state of Iowa. And such railroad company shall have and possess all the powers, franchises, rights and privileges, and be subject to the same liabilities of railroad companies organized and incorporated under the laws of this state, including the right to sue, and the liability to be sued, the same as railroads organized under the laws of this state; *provided*, such railroad corporation shall file with the secretary of the state of Iowa, a copy of its articles of incorporation, if incorporated under a general law of such state, or a certified copy of the statute laws of such state incorporating such company, where the charter of such railroad corporation was granted by statute of such state.

May have same rights and privileges as company organized in this state.

Copy of articles to be filed with secretary of state.

RE-LOCATION OF RAILWAYS.

[Sixteenth General Assembly, Chapter 118.]

SEC. 1. Any railroad company desiring to change or remove the line of its road, after the same has been permanently located and constructed, may for that purpose file a petition in the district or circuit court in any one of the counties wherein the change or removal is proposed to be made, describing with convenient accuracy that portion of its line of road which said company seeks to have changed or removed, and asking the court to grant the right or authority to make such change or removal. To this suit, all trustees, mortgagees, or other lien holders, and all townships, cities and counties which have aided by taxation to build the road, must be made defendants by service of original notice, in the time and manner as provided by law for service of original notices.

Petition for change.

Who shall be defendants.

SEC. 2. In addition to the foregoing notice, a public notice to all whom it may concern, of the time of filing such petition and of the object thereof and of the term of court at which the application for authority to make the change will be made, and requiring all persons desiring the re-payment of money or the return of property, as in this act contemplated, to appear at such court and make good their claim therefor, must be published in a newspaper printed in each county wherein the change is to be made, for a period of ten successive weeks before the term of court at which the application is to be made. The court may order any additional notice or publication that it may deem proper.

Notice.

SEC. 3. But no railroad company shall be allowed to change or remove the line of its road after its permanent location and construction, without re-paying to the proper parties all moneys, and restoring all property, or its value, which were given or donated to the company building the same, exclusively in consideration of

Repayment of money and return of property.

With consent
of lien-holders.

the said railroad's being located and constructed on such line, nor without first procuring the proper consent of all parties having liens upon said railroad; and also of any township, city or county that has by taxation or by the issuing of bonds contributed money to aid in the construction thereof; *provided*, that the consent of such township, city or county shall be necessary with reference only to the change to be made within its own territorial limits.

Court shall
make order.

SEC. 4. If the court is satisfied that due and proper notice has been given, and that the consent of the proper parties, as herein contemplated, has been duly obtained, it shall order and adjudge in favor of all persons who have appeared and established their claims thereto, the re-payment of all moneys, and the return of all property, or its value, which were given or donated to the company exclusively in consideration of the roads being located on the line from which it is proposed to make the removal, and shall declare and adjudge all persons not so appearing and establishing their claims as aforesaid, forever thereafter debarred and estopped from setting up or asserting the same. The court may, if the public interest demand it, make an order authorizing the railroad company to change or remove the location of its road, as asked for in the petition, but such order must be on the condition that all claims for the re-payment of money, or the return of property, which may be allowed by the court, as herein provided, shall be first paid or satisfied.

Effect of re-
moval on liens,
mortgages, etc.

SEC. 5. All mortgage liens or other incumbrances on the line of road which the company is authorized by the court to change, shall be and remain valid liens and incumbrances on the line of road to which the change is made, and shall take priority of all other liens and incumbrances upon such new line of road.

Township
trustees to ap-
pear for their
respective
townships.
Proviso.

To what roads
this shall ap-
ply.

Cuts to be filled
and banks
leveled upon
removal.

SEC. 6. For the purpose of this act, the trustees of each township shall be served with notice, and shall be authorized to represent and act for their respective townships; *provided*, that no vested right of any person or persons, living on and along the line of any railroad removed under the provisions of this act, shall be defeated or affected by this act; and *provided further*, that the provisions of this act shall apply only to such railroads as were constructed prior to the year one thousand eight hundred and sixty-six.

SEC. 7. When any railroad company shall take up their track and re-locate the same under the provisions of this act, shall fill up the cuts and level down the banks, or cause the same to be done, within two years from the time of taking up such track.

[Seventeenth General Assembly, Chapter 152.]

^{37, chapter 118,} ^{16th G. A. not} The provisions of section seven, of chapter 118, of the laws of the sixteenth general assembly, shall not apply to any railroad which has its initial point at any town upon the Mississippi river, and which had in the year 1859, sixty-three miles and no more of completed track from such initial point, and provided that the exemption from the provisions of said section shall only apply a distance of sixty-three miles from the initial point of any such railroad.

OF THE OPERATION.

SEC. 1292. Any railway corporation, operating a railway in this state, intersecting or crossing any other line of railway, of the same gauge, operated by any other company, shall, by means of a Y, or other suitable and proper means, be made to connect with such other railway so intersected or crossed; and railway companies where railroads shall be so connected shall draw over their respective roads the cars of such connecting railway; and also those of any other railway or railways connected with said roads made to connect as aforesaid, and also the cars of all transportation companies or persons, at reasonable terms, and for a compensation not exceeding their ordinary rates.

[Substitute for the original section ; 15th G. A., ch. 18.]

SEC. 1293. When such corporations are unable to agree upon the method and terms of connection and rates of transportation, either, or any person interested in having such connection made, may make application to the district or circuit court in any county in which said connection may be desired or located, or to the judge of said courts if in vacation, after ten days' notice in writing to the companies. After hearing the parties, or on default, the said judge shall appoint three disinterested persons, being presidents or superintendents of railways, or experts in railway business, without regard to their place of residence, as commissioners, to determine the method and terms of connection and rules and regulations necessary thereto; *provided*, that the rates as fixed by the said commissioners, for freights offered or transported in the cars of the company offering the same, shall in no case exceed the local rates per mile fixed by law or set forth in the carrying companies' freight tariff prepared and made public in accordance with the laws of the state.

[Substitute for the original section ; 15th G. A., ch. 18.]

SEC. 1294. Said commissioners shall meet at such time and place as may be ordered by said court or judge, and shall hear the parties and any testimony brought before them, and make and sign their report, prescribing the things to be done. Such report made by them, or a majority of them, shall, within such time as ordered by said court or judge, be returned to and filed in said court, to be confirmed thereby; and, when so confirmed, it shall be binding upon the parties until another report shall be made upon a new application, which cannot be made within two years after such confirmation.

SEC. 1295. Said commissioners shall have such compensation as shall be deemed reasonable by the court, and shall be governed by the same rules and have the same power in compelling the attendance of witnesses, and shall themselves be sworn, as is now provided in cases of referees in civil actions at law in the district court, and exceptions may be taken to their report in the same manner; and such exceptions shall have the same effect, and the proceedings upon their report shall be the same as on reports of referees in cases referred from said court, and the costs shall be paid by the parties in such proportion as to the court may seem equitable and just.

Duty, power.
and compensa-
tion of commis-
sioners.
Same, § 4.

Application to
court or judge
when com-
panies dis-
agree: who may
make.
Same, § 2.

Appointment
of commission
to fix rates.

Rates not to
exceed com-
pany's tariff.

Testimony
taken by: re-
port of: confir-
mation.
Same, § 3.

SEC. 1296. If the officers of, or any person in the employ of said corporation, refuse to comply with the terms of such confirmed report, they may be punished as for a contempt of said court.

Penalty.
Same, § 5.

Parallel rail-
ways cannot
pool earnings:
Penalty.

SEC. 1297. It shall be unlawful for any railway company to make any contract, or enter into any stipulation with any other railway company running in the same general direction, by which either company shall, directly or indirectly, agree to divide in any manner or proportion the joint earnings upon the whole or any part of the freight transported over such roads, and any violation of this provision shall render the railway company violating the same, liable to a penalty of five thousand dollars for each month for which such earnings are divided, to be recovered for the use of the permanent school fund in the name of the state.

SEC. 1298. Contracts between any such corporations operating a railway, allowing a drawback of not exceeding fifteen per cent. on the gross earnings of the railway on business coming from or going to any other railway, shall be legal and binding.

SEC. 1299. Any such corporation owning and operating a railway partially constructed, may, for the purpose of inducing the investment of capital in the extension or completion of its railway, contract with the party furnishing such means, or the trustees who may represent them, allowing a drawback not exceeding twenty per cent. of the gross earnings of all business coming from and going to any part of the extension or portion to be aided or completed with the money or means thus obtained; or such railway company may lease of the trustees or said parties, the portion to be built with the means thus furnished, subject to the same rights and liabilities as are provided in the next section.

SEC. 1300. Any such corporation may sell or lease its railway, property and franchises to, or may make joint running arrangements with, any corporation owning or operating any connecting railway, and the corporation operating the railway of another, shall, in all respects, be liable in the same manner and extent as though such railway belonged to it, subject to the laws of this state.

See *Treadway v. C. & N. W. R. Co.*, 21-351.

SEC. 1301. Any contract, lease, or benefit derived therefrom, contemplated in either of the three preceding sections, may be mortgaged for the purpose of securing construction bonds in the same manner as other property of the corporation.

SEC. 1302. Where any railway company shall be organized under a corporate name, and shall have made contracts for payments to it upon delivery of stock in such company, and shall, subsequent to such contracts, have changed their corporate name, or when the real ownership in the property, rights, powers, and franchises have passed legally or equitably, into any other company, no such contracts shall be enforced in law or equity until tender or delivery of stock in such last named corporation or company.

SEC. 1303. When any railway has been completed and opened for use, the corporation constructing the same shall report to the next general assembly, under oath, the total cost thereof, specifying the amount expended for construction, engines, cars, depots, and other buildings, and the amount of all other expenses, together with the length of the railway, the number of planes, with their

Mortgaged.
Same, § 3.

Change of
ownership or
name: rights
and remedies.

Report to gen-
eral assembly
made.
9 G. A. ch. 169
§ 1.

inclination to the mile, the greatest curvature, the average width of grade, and the number of ties per mile.

SEC. 1304. In the month of June in each year, every corporation operating a railway in this state shall fix its maximum rates of fare for passengers and freight, for transportation of timber, wood, and coal, per ton, cord, or thousand feet per mile; also its fare and freight per mile for transporting merchandise and articles of the first, second, third and fourth classes of freight; and, on the first day of July following, shall put up at all the stations and depots on its railway, a printed copy of such fare and freight, and cause a copy to remain posted during the year. For wilfully neglecting so to do, or for wilfully receiving higher rates of fare or freight than those posted, the company shall forfeit and pay to the state of Iowa, for the use of the school fund, not less than one hundred dollars nor more than two hundred dollars, to be recovered in any civil action in the name of the state; and it is hereby made the duty of the several district-attorneys within their respective districts to sue for and recover all sums forfeited as aforesaid; and such corporation shall also forfeit and pay to the person injured, double the amount of compensation or charge illegally taken, to be recovered by such person in a civil action.

9th G. A., ch. 169, § 2, similar to this section, considered and held not to be in conflict with the U. S. Const., as being an attempt to regulate commerce between the states: *Fuller v. C. & N. W. R. Co.*, 31-187.

SEC. 1305. For the transportation of passengers, no railway company shall charge to exceed three and one-half cents per mile per passenger.

SEC. 1306. All contracts, stipulations, and conditions, regarding the right of controlling and regulating the charges for freight and passengers upon railways, heretofore made in granting land or other property or voting taxes to aid in the construction of, or franchises to, railway corporations, are expressly reserved, continued, and perpetuated in full force and effect, to be exercised by the general assembly, whenever the public good or the public necessity requires such exercise thereof.

[In next to the last line, the printed code has "and" in place of "or" as it is in the original.]

SEC. 1307. Every corporation operating a railway shall be liable for all damages sustained by any person, including employees of such corporation, in consequence of the neglect of agents, or by any mismanagement of the engineers or other employees of the corporation, and in consequence of the wilful wrongs, whether of commission or omission of such agents, engineers, or other employees, when such wrongs are in any manner connected with the use and operation of any railway, on or about which they shall be employed, and no contract which restricts such liability shall be legal or binding.

As without this section the company would not be liable to an employee for injuries resulting from negligence of a co-employee (*Sullivan v. M. & M. R. Co.*, 11-421), the intention of the section is merely to give the employee a *right of action* in such

cases, and not to change the degree of care necessary, which is, as between master and servant, that of ordinary care and diligence only. The degree of care required as to employees is not the same as demanded towards passengers: *Hunt v. C. &*

Maximum rates to be annually fixed and posted up: 9th G. A. ch. 169, § 2. 13 G. A. ch. 139.

Rights reserved.

Liable for injuries done employees: contracts restricting liability void.

9th G. A. ch. 169, § 7.

13 G. A., ch. 121.

14 G. A., ch. 65.

N. W. R. Co., 26-363.

Plaintiff is not released from his obligation to make out, in the first instance, freedom from contributory negligence on his part, to entitle him to recover: *Murphy v. C. R. I. & P. R. Co.*, 45-661.

This section, so far as it changes the common law liability of such corporation for injuries to employees resulting from acts of co-employees, extends only to such employees as are engaged in the hazardous business of operating the railroad, and not to those whose employment is not connected therewith: *Schreder v. C. R. I. & P. R. Co.*, 41-344; and is therefore not unconstitutional as not being of uniform operation, or as granting exclusive privileges: *Deppe v. same*, 36-52; *McAunich v. M. & M. R. Co.*, 20-338.

A workman in the shops of the company is not so engaged as to come within the provisions of the section: *Potter v. C. R. I. & P. R. Co.*, 46-399. But a person engaged in working on a bridge of the company, and required in the course of his employment to ride upon its trains, is within the section: *Schreder v. same*, 47-375, 383; and so is a section hand: *Fransden v. same*, 36-372; or a hand

engaged in shoveling gravel from a gravel train: *McKnight v. I. & M. R. Const. Co.*, 43-406; or a hand engaged in connection with the operation of a dirt train: *Deppe v. C. R. I. & P. R. Co.*, 36-52.

Whether an employee is so engaged or not is a question for the jury: *Schreder v. C. R. I. & P. R. Co.*, 41-344.

The company *held* liable to an employee for damages resulting from negligence of a co-employee whose duty it was to keep a bridge in order, in the performance of such duty: *Locke v. S. C. & P. R. Co.*, 46-109.

Where the injury results in death, the company is liable to the personal representatives of deceased, under § 2526: *Philo v. Ill. Cent. R. Co.*, 33-47.

The fact that a lessee may be held liable under this section does not prevent recovery against the owner of the road. The actions are cumulative: *Bower v. B. & S. W. R. Co.*, 42-546.

Under the last clause of the section, a contract exempting a railroad company from liability for injury to a passenger is invalid: *Rose v. D. V. R. Co.*, 39-246.

Liability cannot be lessened by contract or rule.
11 G. A. ch. 113.

SEC. 1308. No contract, receipt, rule, or regulation, shall exempt any corporation engaged in transporting persons or property by railway from liability of a common carrier, or carrier of passengers, which would exist had no contract, receipt, rule, or regulation, been made or entered into.

A contract in violation of this section is void, whether it is with or without consideration: *Brush v. S. A. & D. R. Co.*, 43-554.

Whether this section would be applicable to a contract made in Iowa but to be wholly performed in another state, *quare*; but it was held applicable to a contract to transport cattle from Clinton, Iowa, to Chicago, on the ground that it was to be partly performed in Iowa: *McDaniel v. C. & N. W. R. Co.*, 24-412.

A company is not prohibited from providing by contract that it shall not be liable beyond the terminus of

its road: *Mulligan v. I. C. R. Co.*, 36-181, 187.

The common law liability of a common carrier attaches to a carrier of live stock, so far as the rule is not inapplicable by reason of the peculiar character of the property. Responsibility for the carriage of stock cannot, therefore, be restricted by contract: *McCoy v. K. & D. M. R. Co.*, 44-424.

A rule or custom limiting liability for injury to all stock, including such as is of especial value as being *blooded*, to the value of common stock, is void: *McCune v. B. C. R. & N. R. Co.*, 52-600.

For similar provision see § 2184.

Judgment against: when a lien.
9 G. A. ch. 169,
§ 9.

SEC. 1309. A judgment against any railway corporation for any injury to any person or property, shall be a lien within the county where recovered on the property of such corporation, and such lien shall be prior and superior to the lien of any mortgage or trust deed executed since the fourth day of July, A. D. 1862.

A right of action, or an action pending for such injury, is not a lien, and | a purchaser of the road before the rendition of judgment takes it free

from the lien of such judgment when | *Verry*, 48-458; *White v. K. & D. R.*
rendered: *B. C. R. & N. R. Co. v. Co.*, 52-97

SEC. 1310. All railway corporations that have been, or may hereafter be organized, under the laws of this state, that operate or may hereafter operate, a line of railway in this state terminating at or near the city of Council Bluffs, and making a connection with any railway, which, either by its charter or otherwise, extends to a point on the boundary or within the limits of this state, be, and they are hereby prohibited from making any transfer of freights, passengers, or express matters to or with any other railway corporation at or near such terminus—either by delivering or receiving the same—at any other place than in this state, at or near the said point at which the said railway extending to the boundary of this state terminates.

14 G. A. ch. 6 (§§ 1310-1316), held, art. 1, § 8, and acts of congress, U. to be void as being a regulation of S. Rev. Stat., §§ 5257, 5258: *City commerce between the states, and of Council Bluffs v. K. C., St. J. & C. B. R. Co.*, 45-338.

SEC. 1311. Every railway corporation, which, by its charter or otherwise, has its terminus at any point on the boundary or within the limits of this state, or which has authority to bridge or ferry the Missouri river for the purpose of having a continuous line of its railway, and for connecting with other railways in this state, is hereby prohibited from making any transfer of freights, passengers, or express matters to or with any other railway corporation, either by delivering or receiving the same at any other place than in this state, at or near its legal terminus; and every such corporation extending to the boundary or within this state, or having authority to bridge or ferry said Missouri river, shall erect and maintain at or near its legal terminus within the limits of this state, all its depots, stations, and other buildings necessary for such transfer.

SEC. 1312. Every railway corporation which has heretofore made, or which shall hereafter make, any contract with any municipal corporation in this state, is hereby prohibited from, in any manner, violating any of the provisions of such contract; and every railway corporation which has heretofore made, or which shall hereafter make, any contract with any municipal corporation in this state, is hereby required to perform each and all of the provisions of any and every such contract, specifically as agreed therein. In every case in which any such municipal corporation has complied with its obligations relating to such contract at any stage of the progress of its fulfillment, so far as it has agreed to do, such municipal corporation shall not be required to furnish any further tender or guarantee of compliance on its part in order to secure its rights in the courts; but in case anything remains to be done by such municipal corporation under such contract, after the completion of the same on the part of the railway corporation contracting therewith, then it shall, after the enforced compliance on the part of such corporation as hereinafter provided, be required to fully comply on its part.

SEC. 1313. In case of a refusal of any railway corporation to comply with the provisions of section thirteen hundred and ten of this chapter, or its failure to perform the duties required in the preceding section, or their doing or having done any act at

Provisions in relation to railways terminating at or near Council Bluffs.
14 G. A. ch. 6, § 1.

Transfer of freights and passengers prohibited at any place out of the state.
Same, § 2.

Contracts with municipal corporations enforced.
Same, § 3.

Penalty for failure to comply. Same, § 4. variance with such performance or duties, then the municipal corporation affected thereby, or with which the contract in that particular case was made, may, in an action by mandamus, in any court of record in the county in which such municipal corporation is situate, proceed against such corporation so failing or refusing, and such corporation shall, on proper proof, be required by such court to perform all the duties required by this and the three preceding sections, and said law pertaining to mandamus shall apply in such a case with the same force that it does in all other cases, except as it is herein enlarged.

[In the printed code the word "provided" occurs between "action" and "by" in the seventh line, which is not in the original.]

SEC. 1314. In case any municipal corporation affected as before stated, or with which any such contract has been made, should not desire to seek the remedy given in the last preceding section, it may proceed in equity by the action of specific performance, in any court in the county in which such municipal corporation is situate, and in case such court should find that a contract had been made, it shall, by decree, require such company so violating or offering to violate its contract, or failing or refusing to perform the provisions thereof, to specifically perform the same.

Proceedings to enforce contracts. Same, § 5.

SEC. 1315. Any court or judge in this state to whom application shall be made, shall, at the suit of any municipal corporation as aforesaid, restrain by injunction the violation of any provisions of the five preceding sections of this chapter, or of the provisions of any contract as aforesaid; and in such proceeding, it shall not be necessary for such municipal corporation to give bond.

Injunction Same, § 6.

[In the original, instead of the words "the five preceding sections," occur the words "sections thirty-two, thirty-three and thirty-four," which sections are 1306, 1307 and 1308, as numbered in the printed code. In the commissioners' report the same words are used but the sections there referred to as "sections 32, 33 and 34 of this chapter" correspond to § 1309, 1310 and 1311 of the printed code. It is believed, however, that the sections intended to be referred to, both in the report and in the code as adopted are §§ 1310, 1311 and 1312.]

Remedies not exclusive. Same, § 7.

SEC. 1316. The remedies provided for in the two preceding sections shall not be construed to be exclusive, and any order, judgment, or decree made by any court in pursuance of any provisions of the six preceding sections, shall be enforced in the usual manner.

OF ASSESSMENT AND TAXATION.

Executive council to assess. 14 G. A. ch. 26, § 1.

SEC. 1317. On the first Monday of March in each year, the executive council shall assess all the property of each railway corporation in this state, excepting the lands, lots, and other real estate belonging thereto not used in the operation of any railway.

The provisions of this and the following sections as to the taxation of railway property (14th G. A., ch. 26) are not in conflict with Const., art 8, § 2, relating to the taxation of the property of corporations, *City of Dubuque v. C. D. & M. R. Co.*, 47-196. But § 9 of that act which released companies from the payment of municipal taxes previously levied, held unconstitutional: *City of Davenport v. C. R. I. & P. R. Co.*, 38-633. The right of the C. R. I. & P. R. Co. to the use of the government bridge across the Mississippi river at Davenport, held, not taxable except as part of the property of the company used in the operation of its road; also, held, that the omission of the executive council to include the same in the assessment of the company would not give the city authority to

assess and tax such interest: *C. R. I. & P. R. Co. v. City of Davenport*, 51-451.

As to the taxation of the property of railway companies not used in the

operation of their roads, see § 808; and as to previous provisions relating to the taxation of railway property, &c., see notes to § 801.

SEC. 1318. The president, vice-president, or general superintendent, and such other officers as such council may designate of any corporation operating any railway in this state, shall furnish said council on or before the fifteenth day of February in each year, a statement, signed and sworn to by one of such officers, showing in detail for the year ending on January the first preceding:

1. The whole number of miles owned, operated, or leased in the state by such corporation making the return, and the value thereof per mile, with a detailed statement of all property of every kind, and the value, located in each county in the state;

2. Also a detailed statement of the number and the value thereof of engines, passenger, mail, express, baggage, freight, and other cars, or property used in operating or repairing such railway in this state; and on railways which are part of lines extending beyond the limits of this state, the return shall show the actual amount of rolling stock in use on the corporation's line in the state during the year for which return is made.

The return shall show the amount of rolling stock, the gross earnings of the entire railway, and the gross earnings of the same in this state, and all property designated in the next section, and such other facts as such council may, in writing, require. If such officers fail to make such statement, said council shall proceed to assess the property of the corporation so failing, adding thirty per cent. to the assessable value thereof.

[As to taxation of sleeping and dining cars, see 17th G. A., ch. 114, inserted following § 1:23.]

SEC 1319. The said property shall be valued at its true cash value, and such assessment shall be made upon the entire railway within the state, and shall include the right of way, road-bed, bridges, culverts, rolling-stock, depots, station-grounds, shops, buildings, gravel beds, and all other property, real and personal, exclusively used in the operation of such railway. In assessing said railway and its equipments, said council shall take into consideration the gross earnings per mile for the year ending January the first, preceding, and any and all other matters necessary to enable said council to make a just and equitable assessment of said railway property. If a part of any railway is without this state, then, in estimating the value of its rolling-stock and movable property, they shall take into consideration the proportion which the business of that part of the railway lying within the state bears to the business of the railway without the state; such valuation shall be in the same ratio as that of the property of individuals.

SEC. 1320. On or before the twenty-fifth day of March in each year, said council shall transmit to the county auditor of each county through which any railway may run, a statement showing the length of the main track of such railway within the county, and the assessed value per mile of the same as fixed by a pro rata distribution per mile of the assessed value of the whole property

Officers to furnish statement what it shall contain.
Same, § 2, 11.
12 G. A. ch. 1:6.

How assessment made and value ascertained.
14 G. A. ch. 26,
§ 8.

Statement sent auditor of each county.
Same, § 4.

named in the preceding section. Said statement shall be entered on the proper record of the county.

[As amended, changing the date in first line; 16th G. A., ch. 153.]

Duty of auditor, board of supervisors, and county treasurer.
Same, § 5.

SEC. 1321. At the first meeting of the board of supervisors held after said statement is received by the county auditor, they shall make and cause the same to be entered in the proper record, an order, stating and declaring the length of the main track, and the assessed value of such railway lying in each city, town, township, or lesser taxing district in their county through which said railway runs, as fixed by the executive council, which shall constitute the taxable value of said property for taxable purposes, and the taxes on said property when collected by the county treasurer shall be paid over to the persons or corporations entitled thereto as other taxes, and the county auditor shall transmit a copy of said order to the city council or trustees of such city, incorporated town, or township.

The order of the board becomes upon the assessor's books: *S. C. & St. P. R. Co. v. County of Osceola.* 45-168, 177.

Taxes levied.
Same, § 6.

SEC. 1322. All such railway property shall be taxable upon said assessment at the same rates, by the same officers, and for the same purposes as the property of individuals within such counties, cities, towns, townships, and lesser taxing districts.

See § 810.

Shall not apply.

SEC. 1323. The provisions of this chapter in relation to transporting of passengers, shall not apply to any railway in this state until the gross earnings of the preceding year, reckoning from the first day of January of each year, shall equal or exceed the sum of four thousand dollars per mile average for all the miles of road operated during the whole of that preceding year.

TAXATION OF SLEEPING AND DINING CARS.

[Seventeenth General Assembly, Chapter 114.]

Code, § 1318,
amended.

Return to show
number of case.

Executive
council to
assess.

SEC. 1. In addition to the matters required to be contained in the statement provided for in section thirteen hundred and eighteen of the code, such statement shall show the number of sleeping and dining cars not owned by such corporation, but used by it in operating its railway in this state during each month of the year for which the return is made, and also the number of miles each month that said cars have been run or operated on such railway within the state, and the total number of miles that said cars have been run or operated each month within and without the state.

SEC. 2. The executive council shall, at the time of the assessment of other railway property for taxation, assess for taxation the average number of cars so used by such corporation each month, and the assessed value of said cars shall bear the same proportion to the entire value thereof, that the monthly average number of miles that such cars have been run or operated within the state shall bear to the monthly average number of miles that

such cars have been used or operated within and without the state, such valuation shall be in the same ratio as that of the property of individuals.

SEC. 3. The executive council shall, as provided by sections thirteen hundred and eighteen and thirteen hundred and nineteen of the code, first assess the value of the property of the corporation using sleeping and dining cars not owned by such corporation, and shall then add to such valuation, the amount of the assessed valuation of said sleeping and dining cars, made as hereinbefore provided, and such aggregate amount shall constitute and be considered the assessed value of the property of such corporation for the purposes of taxation. Manner of assessment.

RATES OF FARE AND FREIGHT.

[Fifteenth General Assembly, Chapter 68.]

SEC. 1. All railroad corporations organized or doing business in this state, their trustees, receivers, or lessees, under the laws or authority thereof, shall be limited in their maximum charges to the rates of compensation for the transportation of passengers and freight, which are herein prescribed. All railroads in this state shall be classified according to the gross amount of their respective annual earnings within the state, per mile, for the preceding year, as follows: Class "A" shall include all railroads whose gross annual earnings, per mile, shall be four thousand dollars or more. Class "B" shall include all railroads whose gross annual earnings, per mile, shall be three thousand dollars or any sum in excess thereof less than four thousand dollars. Class "C" shall include all railroads whose gross annual earnings, per mile, shall be less than three thousand dollars. Classification of railroads.

SEC. 2. All railroad corporations, according to their classifications as herein prescribed, shall be limited to compensation per mile for the transportation of any person, with ordinary baggage not exceeding one hundred pounds in weight as follows: Class "A" three cents; class "B" three and one-half cents; class "C" four cents; *provided*, that no such corporation shall charge, demand, or receive any greater compensation per mile for the transportation of children twelve years of age or under, than half the rate above prescribed; *and provided, also*, a charge of ten cents may be added to the fare of any passenger, when the same is paid upon the cars, if a ticket might have been procured within a reasonable time before the departure of the train. * * * *

SEC. 7. It shall be the duty of each railroad corporation operating a railroad in this state during the month of January, 1875, and each and every year thereafter, to make and return to the governor a statement of its gross receipts on its entire road within this state for the year preceding and ending with the 31st day of December. Said statement shall be sworn to by the president and superintendent of the road in this state, and shall contain a detailed statement of the entire receipts for transporting freight and passengers, and all other sources of income of the road. A failure to comply with the provisions of this section shall subject To make annual statement of receipts to governor. How verified.

Penalty for failure to comply.	the corporation so failing, to a penalty of one hundred dollars per day, for each and every day after such report is due until it is made; to be recovered in an action in the name of the state of Iowa, for the benefit of the school-fund. If the executive council shall, on examination, be satisfied of the correctness of said return, it shall be their duty to classify the different railroads in this state as hereinbefore provided, and the governor, when there shall be any change in classification, shall issue a certificate to any corporation or corporations affected by such change, certifying to them the class to which they are respectively assigned. And any change of rates made by any railroad corporation pursuant to any change of classification, shall take effect and be in force from and after the 4th day of July following such changes. The reports from the railroad corporations of this state for the year 1873, made pursuant to the provisions of section twelve hundred and eighty of the code, shall determine the classification of each road for the year ending July 3d, 1875.
Executive council to classify.	
Governor to certify classification.	
Rates to take effect when.	
Classification for first year. Code; § 1280.	

[The other sections of this act are repealed by the act following. 16th G. A., ch. 133, relieving railway companies upon certain conditions from the penalties provided in the omitted sections of the foregoing act, is also omitted]

BOARD OF RAILROAD COMMISSIONERS.

[Seventeenth General Assembly, Chapter 77.]

SEC. 1. Chapter 68, of the acts of the fifteenth general assembly, excepting sections one, two, and seven thereof, *be and the same* is hereby repealed, and the following *be enacted*:

SEC. 2. The governor, with the advice and consent of the executive council shall, before the first day of April next, appoint three competent persons (one of whom shall be a civil engineer), who shall constitute a board of railroad commissioners, and who shall hold their offices from the date of their respective appointments, for the terms of one, two and three years, respectively, from the first day of April next. The governor shall, in like manner, before the first day in April of each year thereafter, appoint a commissioner, to continue in office for the term of three years from said day; and in case any vacancy occurs in the said board by resignation or otherwise, shall, in the same manner, appoint a commissioner for the residue of the term, and may remove such commissioners, and appoint others to fill their vacancy at any time, in the discretion of the governor and executive council. No person owning any bonds, stock or property in any railroad company, or who is in the employment of, or who is in any way or manner pecuniarily interested in any railroad corporation, shall be eligible to the office of railroad commissioner. Said commissioners shall be qualified electors of the state. The commissioners shall, as nearly as practicable, be selected one from the eastern, one from the central and one from the western portions of the state.

SEC. 3. Said commissioners shall have the general supervision of all railroads in the state operated by steam, and shall inquire into any neglect or violation of the laws of this state by any railroad corporation doing business therein, or by the officers, agents or employes, thereof, and shall also from time to time carefully ex-

Persons interested not eligible.

Duties of commissioners.

amine and inspect the condition of each railroad in the state, and of its equipment, and the manner of its conduct and management, with reference to the public safety and convenience, and for the purpose of keeping the several railroad companies advised as to the safety of their bridges, shall make a semi-annual examination of the same, and report their condition to the said companies. And if any bridge shall be deemed unsafe by the commissioners, they shall notify the railroad company immediately, and it shall be the duty of said railroad company to repair and put in good order within ten days after receiving said notice, said bridge, and in default thereof, said commissioners are hereby authorized and empowered to stop and prevent said railroad company from running or passing its trains over said bridge, while in its unsafe condition. Whenever, in the judgment of the railroad commissioners, it shall appear that any railroad corporation fails, in any respect or particular, to comply with the terms of its charter or the laws of the state, or whenever in their judgment any repairs are necessary upon its road, or any addition to its rolling stock, or any addition to or change of its stations or station houses, or any change in its rates of fare for transporting freight or passengers, or any change in the mode of operating its road and conducting its business is reasonable and expedient in order to promote the security, convenience and accommodation of the public, said railroad commissioners shall inform such railroad corporation of the improvements and changes which they adjudge to be proper, by a notice thereof in writing to be served by leaving a copy thereof certified by the commissioners' clerk, with any station agent, clerk, treasurer or any director of said corporation and a report of the proceedings shall be included in the annual report of the commissioners to the legislature. Nothing in this section shall be construed as relieving any railroad company from their present responsibility or liability for damage to person or property.

SEC. 4. The said railroad commissioners shall, on or before the first Monday in December in each year, make a report to the governor of their doings for the preceding year, containing such facts, statements and explanations as will disclose the working of the system of railroad transportation in this state, and its relation to the general business and prosperity of the citizens of the state, and such suggestions and recommendations in respect thereto as may to them seem appropriate. Said report shall also contain as to every railroad corporation doing business in this state:

First.—The amount of its capital stock.

Second.—The amount of its preferred stock, if any, and the condition of its preferment.

Third.—The amount of its funded debt and the rate of interest.

Fourth.—The amount of its floating debt.

Fifth.—The cost and actual present cash value of its road and equipment, including permanent way buildings and rolling stock, all real estate used exclusively in operating the road, and all fixtures and conveniences for transacting its business.

Sixth.—The estimated value of all other property owned by such corporation, with a schedule of the same, not including lands granted in aid of its construction.

Seventh.—The number of acres originally granted in aid of construction of its road by the United States or by this state.

Eighth—Number of acres of such land remaining unsold.

Ninth—A list of its officers and directors, with their respective places of residence.

Tenth—Such statistics of the road and of its transportation business for the year as may, in the judgment of the commissioners, be necessary and proper for the information of the general assembly, or as may be required by the governor. Such report shall exhibit and refer to the condition of such corporation on the first day of July of each year, and the details of its transportation business transacted during the year ending June 30th.

Eleventh—The average amount of tonnage that can be carried over each road in the state with an engine of given power.

Report of railroad companies.

SEC. 5. To enable said commissioners to make such a report, the president or managing officer of each railroad corporation doing business in this state, shall annually make to the said commissioners, on the 15th day of the month of September, such returns, in the form which they may prescribe, as will afford the information required for their said official report; such returns shall be verified by the oath of the officer making them; and any railroad corporation whose return shall not be made as herein prescribed by the 15th day of September, shall be liable to a penalty of one hundred dollars for each and every day after the 16th day of September that such return shall be wilfully delayed or refused.

Salary of commissioners.

SEC. 6. The said commissioners shall hold their office in the capitol, or at some other suitable place in the city of Des Moines. They shall each receive a salary of three thousand dollars per annum, to be paid as the salaries of other state officers are paid, and shall be provided at the expense of the state with necessary office furniture and stationery, and they shall have authority to appoint a secretary, who shall receive a salary of fifteen hundred dollars per annum.

And their secretary.

Shall be sworn, and give bond.

SEC. 7. Said commissioners and secretary shall be sworn to the due and faithful performance of the duties of their respective offices before entering upon the discharge of the same, as prescribed in section six hundred and seventy-six of the code, and no person in the employ of any railroad corporation, or holding stock in any railroad corporation, shall be employed as secretary. Each of said commissioners shall enter into bonds with security to be approved by the executive council, in the sum of ten thousand dollars, conditioned for the faithful performance of his duties.

Salaries to be paid by special fund.

SEC. 8. To provide a fund for the payment of the salaries and current expenses of the board of commissioners, they shall certify to the executive council on or before the first day of January in each year, the amount necessary to defray the same, which amount shall be divided pro rata among the several railway corporations according to the assessed valuation of their property in the state. The executive council shall thereupon certify to the board of supervisors of each county, the amount due from the several railway corporations located and operated in said county and the board of supervisors shall cause the same to be levied and collected as other taxes upon railway corporations, and the county treasurer shall account to the state for the same as provided by law for other state funds.

SEC. 9. The said commissioners shall have power, in the discharge of the duties of their office, to examine any of the books, papers or documents of any such corporation, or to examine under oath or otherwise any officer, director, agent, or employee of any such corporation; they are empowered to issue subpoenas and administer oaths in the same manner and with the same power to enforce obedience thereto in the performance of their said duties as belong and pertain to courts of law in this state; and any person who may wilfully obstruct said commissioners in the performance of their duties, or who may refuse to give any information within his possession that may be required by said commissioners within the line of their duty, shall be deemed guilty of a misdemeanor, and shall be liable, on conviction thereof, to a fine not exceeding one thousand dollars, in the discretion of the court, the costs of such subpoenas and investigation to be first paid by the state on the certificate of said commissioners.

SEC. 10. It shall be the duty of any railroad corporation, when within their power to do so, and upon reasonable notice, to furnish suitable cars to any and all persons who may apply therefor, for the transportation of any and all kinds of freight, and to receive and transport such freight with all reasonable dispatch, and to provide and keep suitable facilities for the receiving and handling the same at any depot on the line of its road; and also to receive and transport in like manner, the empty or loaded cars, furnished by any connecting road, to be delivered at any station or stations on the line of its road, to be loaded or discharged, or re-loaded and returned to the road so connecting; and for compensation, it shall not demand or receive any greater sum than is accepted by it from any other connecting railroad, for a similar service.

SEC. 11. No railroad corporation shall charge, demand, or receive from any person, company, or corporation, for the transportation of persons or property, or for any other service a greater sum than it shall at the same time charge, demand, or receive from any other person, company, or corporation for a like service from the same place, or upon like condition and under similar circumstances, and all concessions of rates, drawbacks and contracts for special rates shall be open to and allowed all persons, companies and corporations alike, at the same rate per ton per mile by car load upon like condition and under similar circumstances, unless by reason of the extra cost of transportation per car load from a different point the same would be unreasonable and inequitable, and shall charge no more for transporting freight from any point on its line than a fair and just proportion of the price it charges for the same kind of freight transported from any other point.

SEC. 12. No railroad company shall charge, demand, or receive from any person, company, or corporation an unreasonable price for the transportation of persons or property, or for the handling or storing of freight, or for the use of its cars, or for any privilege or service afforded by it in the transaction of its business as a railroad corporation.

SEC. 13. Any railroad corporation which shall violate any of the provisions of this act, as to extortion or unjust discrimina-

Powers in examining records of railroad companies.

Duties of railroads in certain cases.

Roads shall not discriminate in rates.

No railroad company shall charge unreasonable rates.

Penalty for violation of provisions of this act.

tion, shall forfeit for every such offense to the person, company, or corporation aggrieved thereby, three times the actual damages sustained or overcharges paid by the said party aggrieved, together with the cost of suit, and a reasonable attorney's fee to be fixed by the court, and if an appeal be taken from the judgment or any part thereof, it shall be the duty of the appellate court to include in the judgment an additional reasonable attorney's fee for services in the appellate court or courts, to be recovered in a civil action therefor. And in all cases where complaint shall be made, in accordance with the provisions of section fifteen, hereinafter provided, that an unreasonable charge is made, the commissioners shall require a modified charge for the service rendered, such as they shall deem to be reasonable, and all cases of a failure to comply with the recommendation of the commissioners shall be embodied in the report of the commissioners to the legislature; and the same shall apply to any unjust discrimination, extortion, or overcharge by said company, or other violation of law.

Investigation in case of accident.

SEC. 14. Upon the occurrence of any serious accident upon a railroad which shall result in personal injury, or loss of life, the corporation operating the road upon which the accident occurred shall give immediate notice thereof to the commissioners whose duty it shall be, if they deem it necessary, to investigate the same, and promptly report to the governor the extent of the personal injuries, or loss of life, and whether the same was the result of the mismanagement or neglect of the corporation on whose line the injury or loss of life occurred. *Provided*, that such report shall not be evidence or referred to in any case in any court.

Proviso.

Examination of rates by commissioners on complaint of mayor, &c.

SEC. 15. It shall be the duty of said commissioners upon the complaint and application of the mayor and aldermen of any city or the mayor and council of any incorporated town, or the trustees of any township, to make an examination of the rate of passenger fare or freight tariff charged by any railroad company, and of the condition or operation of any railroad, any part of whose location lies within the limits of such city, town or township, and if twenty-five or more legal voters in any city or township shall, by petition in writing, request the mayor and aldermen of such city or the trustees of such township, to make the said complaint and application, and the mayor and aldermen, or the trustees, refuse or decline to comply with the prayer of the petition, they shall state the reason for such non-compliance in writing upon the petition, and return the same to the petitioners; and the petitioners may thereupon, within ten days from the date of such refusal and return, present such petition to said commissioners and said commissioners shall, if upon due inquiry and hearing of the petitioners, they think the public good demands the examination, proceed to make it in the same manner as if called upon by the mayor and aldermen of any city, or the trustees of any township. Before proceeding to make such examination, in accordance with such application or petition, said commissioners shall give to the petitioners and the corporation reasonable notice, in writing, of the time and place of entering upon the same. If, upon such an examination, it shall appear to said commissioners that the complaint alleged by the applicants or petitioners is well founded,

Or on petition of twenty-five citizens.

they shall so adjudge, and shall inform the corporation operating such railroad of their adjudication within ten days, and shall also report their doings to the governor, as provided in the fourth section of this act.

SEC. 16. In the construction of this act, the phrase railroad shall be construed to include all railroads and railways operated by steam, and whether operated by the corporation owning them or by other corporations or otherwise. The phrase railroad corporation shall be construed to mean the corporation which constructs, maintains or operates a railroad operated by steam power.

SEC. 17. Nothing in this act shall be construed to estop or hinder any persons or corporations from bringing suit against any railroad company for any violation of any of the laws of this state for the government of railroads.

SEC. 18. All acts or parts of acts inconsistent with this act are hereby repealed.

Phrases "railroad" and "railroad corporation." These provisions not to hinder any suit against railroad company.

Repealing clause.

TAXES IN AID OF RAILROADS.

[Sixteenth General Assembly, Chapter 123.]

SEC. 1. It shall be lawful for any township, incorporated town or city to aid in the construction of any projected railroad in this state, as hereinafter provided.

Who may aid in construction.

Under a similar act (12 G. A., ch. 48), it was held that the legislature has not the constitutional power to authorize the voting of a tax by a township or city, to be given to a railway company to aid in the construction of its road: *Hanson v. Vernon*, 27-28, fully citing and discussing previous cases; but in passing upon a subsequent act of the same kind (13th G. A., ch. 102), this case was overruled, and it was held that the act was not unconstitutional as authorizing a taking of private property for public use; that the use was public, although for private profit; and that the taxing power is not conditioned, as is that of eminent domain, upon the making of compensation: *Stewart v. Board of Supervisors, &c.*, 30-9; followed in *McG. & S. C. R. Co. v. Birdsall*, 30-255; and *Bonnifield v. Bidwell*, 32-149; also as to the present act, in *Renwick v. D. & N. R. Co.*, 47-511; and criticised in *King v. Wilson*, 1 *Dillon* (U. S. C. C.), 555.

The action of the township trustees in calling an election under 13 G. A., ch. 102, held, to be of a judicial or quasi judicial character, so that the question whether such action was illegal or without jurisdiction might be determined on certiorari: *Jordan v. Hayne*, 36-9. But where, although the petition was not signed by the re-

quisite number of tax-payers, the trustees had decided it sufficient, and ordered an election, and the tax was voted and levied, held, that the validity of the tax could not be assailed for such defect in the petition, and that it could only be taken advantage of in some method provided for direct review: *Ryan v. Varga*, 37-78.

Under 12 G. A., ch. 48, held, that although it was the duty of the treasurer to proceed to collect the tax when due, he could not be compelled by the company to do so until it showed itself entitled thereto: *Harwood v. Case*, 37-692; and that under 14th G. A., ch. 2, the tax did not become delinquent until the company was entitled to the tax and the whole amount thereof, and that the latter act, though retrospective, was not in that respect invalid: *Ibid.*

Held, that the duty of the trustees, as to giving certificate of completion of road, etc., (as provided in 13th G. A., ch. 102 and 14th G. A., chs. 2 and 50), is only to determine whether the road is completed, and that they could not refuse to give the certificate on the ground of fraud in the election, or in the certificate of the engineers, etc.: *Harwood v. Quinby*, 44-335; also held that such certificate of the trustees was not a judicial act and was not conclusive, its only purpose being to authorize the

county treasurer to pay over to the company the funds collected, and that it had nothing to do with the treasurer's right to collect the tax: *Lamb v. Anderson*, 54-190.

Also, held, that the purchase of a line of road, instead of the construction of the line proposed, would not entitle the company to the tax voted: *Ibid.*

In general, as bearing upon various provisions of this and similar acts, see *Cattell v. Lowry*, 45-478; *Casady v. Lowry*, 49-523; *Merrill v. Welsher*, 50-61.

Duty of trustees or council on presentation of petition by a majority of tax payers.

Notice to specify.

Election: questions to be submitted

Certificate

Duty of board of supervisors.

Collection of taxes.

SEC. 2. Whenever a petition shall be presented to the council or trustees of any incorporated town or city, or trustees of any township, signed by a majority of the resident freehold tax payers of such township, incorporated city or town, asking that the question of aiding in the construction of any railroad be submitted to the voters thereof, it shall be the duty of the trustees or council of such incorporated town or city, or trustees of such township, to immediately give notice of a special election, by publication in some newspaper published in the county, if any be published therein, and also by posting said notice in five public places in such township, incorporated city or town, at least ten days before said election, which notice shall specify the time and place of holding said election, the line of railroad proposed to be aided, the rate per centum of tax to be levied, and whether the entire per centum voted is to be collected in one year, or one-half collected the first year and one-half the following year; and the amount of work upon said proposed railroad line required to be completed before said tax shall be paid to the railroad company, and where the same shall be performed, and to what point said road shall be fully completed, and any other conditions which shall be performed before such tax shall become due, collectible and payable; and in no case shall such tax become due, collectible or payable until the road is fully completed to such point as mentioned in the notice. At such election the question of taxation shall be submitted, and if a majority of the votes polled be "for taxation," then the recorder of the incorporated town, the city clerk, township clerk, or clerk of said election, shall forthwith certify to the county auditor the rate per centum of tax thus voted by such township, incorporated town or city, the year or years during which the same is to be collected, and the time and terms upon which the same, when collected, is to be paid to the railroad company, under the conditions and stipulations in the said notice, together with an exact copy of the notice, under which such election was held; which said county auditor shall at once cause to be recorded in the office of the recorder of deeds of the county.

When such certificate shall have been made and recorded, the board of supervisors of the county shall at the time of levying the ordinary taxes next following, levy such taxes as are voted under the provisions of this act as shown by said certificate, and cause the same to be placed on the tax lists of the proper township, incorporated city or town, indicating in their order thereupon when and in what proportion the same are to be collected, and upon what conditions the same are to be paid to the railroad company, a certified copy of which said order shall accompany the tax lists.

Said taxes shall be collected at the time or times specified in said order in the same manner, and be subject to the same penal-

ties for non-payment after they are collectible as other taxes, or as may be stated in the petition asking said election.

[As amended, making a majority, instead of a two-thirds vote, sufficient, 17th G.A., ch. 157; also changing the length of time of posting notices from twenty to ten days; 18th G. A., ch. 144.]

SEC. 3. The stipulations and conditions contained in the said Notice must conform to those set forth in the petition, as the same petition is presented to the trustees of the township or trustees or council of the incorporated city or town where the said taxes are proposed to be voted, and the aggregate amount of tax to be voted or levied under the provisions of this act in any township, incorporated town or city, shall not exceed five per centum of the assessed value of the property therein respectively.

SEC. 4. The moneys collected under the provisions of this act shall be paid out by the county treasurer to the treasurer of the railroad company, for whom the same was voted, upon the orders of the president or managing director thereof, at any time after the trustees of such township, or trustees or council of such incorporated town or city voting such tax, or a majority of them shall have certified to the county treasurer that the conditions required of the railroad company and set forth in the notice for the special election at which the tax was voted have been complied with. And it is hereby made the duty of said township trustees, or trustees or council of such incorporated town or city, when the said conditions have been complied with sufficiently to entitle the said railroad company to the amount of such orders, or when the said conditions are fully complied with and performed on the part of the railroad company, to make such certificate.

SEC. 5. It shall be the duty of the county treasurer when required, in addition to a tax receipt to issue to each tax payer, on his payment of taxes voted in aid of a railroad company under the provisions of this act, a certificate showing the amount of tax by him paid in aid of said railroad company, and when the same was paid, and he shall be entitled to charge and receive as compensation therefor, the sum of twenty-five cents for each certificate so by him issued.

Said certificates are hereby made assignable, and when presented by any person holding the legal title thereto to the president, managing director, treasurer, or secretary of the railroad company receiving the taxes paid as shown by said certificate, in amount showing the sum of one hundred dollars or more of taxes to have been paid for said railroad company, it shall be and is hereby made the duty of said railroad company to issue or cause to be issued to said person the amount of stock covered by said certificate or certificates, and if the taxes paid as shown by said certificate or certificates amount in the aggregate to more or less than any certain number of shares of said stock, then the holder aforesaid of such certificate or certificates shall be entitled to receive of said stock the number of shares next greater than the amount covered by said certificates, upon making up the deficiency in money or tendering the same with the said certificates the said stock to be estimated for the purposes hereof at its par value.

Notice must conform to those set forth in the petition, as the same petition.

Maximum per cent. of tax.

Money to be paid out: how and when.

Duty of trustees.

County treasurers: duty of.

Certificates to tax payers:

Company shall issue shares of stock for same.

If road is encumbered to a certain amount, directors are held liable.

SEC. 6. The board of directors of any railroad company receiving taxes voted in aid thereof under the provisions of this act or those members thereof or either of them, who shall vote to bond, mortgage, or in any manner encumber said road to an amount, if the same be a railroad of three feet gauge, to exceed the sum of eight thousand dollars per mile, and if of the ordinary four feet eight and one-half inch gauge, to exceed the sum of sixteen thousand dollars per mile, not including in either case any debt for ordinary operating expenses, shall be liable to the stock holders or either of them, for double the amount, estimated at its par value of the stock by him or her held, if the same should be rendered of less value or lost thereby.

Taxes voted to company may be forfeited.

SEC. 7. Should the taxes voted in aid of any railroad under the provisions of this act remain in the treasury more than two years after the same have been collected, the right to them by the railroad company shall be considered forfeited, and the persons paying the said taxes shall be entitled to receive from the county treasurer the amount by them paid to the said railroad company, in which case the persons paying the said taxes shall be entitled to receive back only their proper pro rata share thereof remaining.

Payment of taxes in labor or material.

SEC. 8. Nothing contained in this act shall preclude any tax payer who may contract with a railroad company for which taxes shall have been, or may thereafter be, voted, under the provisions of this act, to pay his tax thus voted, or any part thereof, in labor upon the line of its road, or in material for its construction, or supplies furnished, or money paid for the construction of the road, in pursuance of the terms and conditions stipulated in the notices of election, in lieu of a payment to the county treasurer, from presenting to the county treasurer a receipt from said railroad company, duly signed by the president or managing director specifying the amount of such payment, and having the same credited by the county treasurer on his tax in aid of said railroad, with the effect in all respects as though the same was paid in money to the said county treasurer; and when such receipts have been presented and thus credited by the county treasurer, they shall have the same force and validity in his settlement with the board of supervisors as the orders from the railroad company provided for in section four hereof.

[The original section repealed and the foregoing substituted, 18th G. A., ch. 28.]

Railroad to be subject to control of general assembly.

SEC. 9. All railroads in this state constructed by or with the aid of any taxes levied and collected under the provisions of this act shall be subject to the control of the general assembly thereof in regard to the management of the same, and the charges for the transportation of freights and passengers thereon.

How aid may be given.

First mortgage bonds.

[Seventeenth General Assembly, Chapter 173.]

SEC. 1. It shall be lawful for any township incorporated town or city to aid in the construction of any projected railroad in this state as hereinafter provided.

SEC. 2. Whenever it shall be proposed in the petition and notice, which are provided in section two of chapter one hundred and twenty-three of the laws of sixteenth general assembly, to is-

sue first mortgage bonds not exceeding in amount the limit established in section six of said act, in lieu of stock as provided in section five of said act, it shall be lawful to issue said bonds of the denomination of one hundred dollars in the same manner as is provided for the issue of stock in said act.

SEC. 3 Whenever it is proposed to issue bonds in lieu of stock as aforesaid, the petition and notice shall state the amount of bonds per mile of road to be issued, the per centum of interest, and time of the payment of the interest and principal of the bonds.

Petition and
notice shall
state.

FORFEITURE OF TAX.

[Eighteenth General Assembly, Chapter 192.]

SEC. 1. Whenever any taxes have been voted and levied upon the property of any township, city or town in any county in this state under the provisions of chapter one hundred and twenty-three of the acts of the sixteenth general assembly, and chapter one hundred and fifty-seven of the acts of the seventeenth general assembly, to aid in the construction of any railway within this state, and the work of construction of the said railway shall not have been in good faith commenced in said township, or in the adjoining township, when the line of said railway does not pass through such township, within two years from the date of the time when such taxes were voted, the right of such company to any such taxes shall be declared to be forfeited, and the board of supervisors of such county shall abate and cancel such tax on the tax-books of the county, and refund any taxes in the treasury of the county that have been paid into such treasury to the person paying the same. The provisions of this section are intended to cover all cases where taxes have been voted and no time was stated in the notice of such election when the work was to be commenced.

Failure to com-
mence work
within two
years.

Tax cancelled
and refunded.

SEC. 2. When taxes have been voted and levied to aid in the construction of any railway within this state by any township, town or city, under and by virtue of the provisions of the acts of the general assembly referred to in section one of this act, and such railway company shall have neglected for the space of six months to comply with the terms of the notice and petition under which such taxes have been voted, and such fact shall be certified to the board of supervisors of the county wherein such taxes were voted by the trustees of the township or town or city council, it is hereby made the duty of the board of supervisors of such county to abate and cancel all such taxes on the tax-books of the county, and refund any money in county treasury to the persons who may have paid the same.

Failure to
comply with
terms.

REGULATIONS AS TO OFFICES.

[Sixteenth General Assembly, Chapter 68.]

SEC. 1. All railroads terminating in Iowa, shall establish and maintain at such terminus, general freight and passenger offices (and express and telegraph offices, when operating an independent express or telegraph company), at localities accessible and convenient to the public, and there keep for sale tickets over their re-

Shall keep of-
fice at conven-
ient point.

spective roads, and in advertising, correctly set forth their true connections, starting or terminal points, time tables and freight tariffs, affording correct information to the business and traveling public.

SEC. 2. If any officer, agent, employe or lessee engaged in operating any railroad, express company or telegraph line, terminating in or operated within the state of Iowa, shall refuse or neglect to comply with any of the provisions or requirements of section one of this act, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum not exceeding five hundred dollars, and may be imprisoned not more than six months.

Failure to
comply deemed
a misdemeanor;
or how punished.

Office to be
kept open with
diagram of
berths.

Failure
deemed a mis-
demeanor:
how punished.

SLEEPING CARS.

[Eighteenth General Assembly, Chapter 169.]

SEC. 1. All railroad and sleeping-car companies running or operating sleepers or sleeping cars within this state, upon railroads terminating therein, shall establish, maintain and keep open to the public at such termini, ticket offices at accessible and convenient places in which they shall keep a diagram of the berths, and state-rooms in such sleepers or sleeping cars, and shall at all times during the day time keep such offices open for the sale of tickets for such berths and state-rooms.

SEC. 2. If any officer, agent, employe, or lessee, engaged in operating any sleeper or sleeping car line, terminating or operated within the state of Iowa, shall refuse or neglect to comply with any of the provisions or requirements of section one of this act he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding five hundred dollars and may be imprisoned not more than six months.

Who may con-
struct: right of
way granted.
R. # 1348.
C. '51, # 780.

CHAPTER 6.

OF TELEGRAPHHS.

SECTION 1324. Any person or company may construct a telegraph line along the public highways of this state, or across the rivers or over any lands belonging to the state or to any private individual, and may erect the necessary fixtures therefor; provided, that when any highway along which said line has been constructed shall be changed, said person or company shall, upon ninety days notice in writing, remove said line to said highway as established. Said notice contemplated herein may be served on any agent or operator in the employ of said person or company.

SEC. 1325. Such fixtures must not be so constructed as to incommodate the public in the use of any highway or the navigation of

any stream; nor shall they be set up on the private grounds of any individual without paying him a just equivalent for the damages he thereby sustains.

[The word "so" in the first line is omitted in the printed code.]

SEC. 1326. If the person over whose lands such telegraph line passes claims more damage therefor than the proprietor of the telegraph is willing to pay, the amount of damages may be determined in the same manner as is provided in chapter four of this title.

SEC. 1327. If the proprietor of any telegraph within this state, or the person having the control and management thereof, refuses to receive dispatches from any other telegraph line, or to transmit the same with fidelity and without unreasonable delay, all the laws of the state in relation to limited partnerships, to corporations, and to obtaining private property for the use of such telegraph shall cease to operate in favor of the proprietor thereof; and, if private property has been taken for the use of such telegraph without the consent of the owner, he may reclaim and recover the same.

Sec. 1328. Any person employed in transmitting messages by telegraph, must do so without unreasonable delay, and any one who wilfully fails thus to transmit them, or who intentionally transmits a message erroneously, or makes known the contents of any message sent or received to any person except him to whom it is addressed, or to his agent or attorney, is guilty of a misdemeanor.

Sec. 1329. The proprietor of a telegraph is liable for all mistakes in transmitting messages made by any person in his employment, and for all damages resulting from a failure to perform any other duties required by law.

It seems that this section does not prevent the company from entering into stipulations, or adopting reasonable regulations governing the transmission of messages and that a regulation that the company will not be liable for mistakes unless the message is repeated, is reasonable and binding upon the parties. The company may stipulate for freedom from liability for mistakes occasioned

by uncontrollable causes, but not for those resulting from its own fault or want of ordinary care or the improper and negligent conduct of its servants. Where the company has been released from liability except for its own negligence the party seeking to recover from it must make out such negligence: *Siccatland v. Ill. & Miss. Tel. Co.*, 27-433.

TAXATION OF TELEGRAPHHS.

[Seventeenth General Assembly, Chapter 59.]

SEC. 1. All telegraph lines built and operated within the state of Iowa shall be subject to taxation, as hereinafter required.

SEC. 2. It shall be the duty of the president, vice-president, general manager or superintendent of every telegraph company operating a line in this state, to furnish the auditor of state, on or before the first Monday of May in each year, a statement under oath, and in such form as the auditor may prescribe, showing the following facts: *First*—The total number of miles owned, operated or leased, within the state, with a separate showing of the

All telegraphs shall be subject to taxation.

Every telegraph company shall report annually to auditor of state.

number leased. *Second*—The total number of miles in each separate line or division thereof, together with the number of separate wires thereon, and stating the counties through which the same is carried. *Third*—The total number of telegraph stations on each separate line, and the total number of telegraphic instruments in use therein, together with the total number of stations, other than railroad stations, maintained. *Fourth*—The average number of telegraph poles, per mile, used in the construction and maintenance of said lines.

Upon which report the state board of equalization shall assess.

And shall determine the rate of tax to be levied.

When tax shall become due.

Proviso:
Telegraph lines used by, and taxed as property of railroad exempt from provisions of this act.

Penalty for not filing report

Repealing clause.

SEC. 3. Upon the receipt of the said statement from the several companies, the auditor of state shall lay the same before the state board of equalization at its meeting on the second Monday in July in each year, which shall proceed to assess said telegraph lines at the true cash value thereof.

SEC. 4. The said state board shall also, at said meeting, determine the rate of tax to be levied and collected upon said assessment, which shall not exceed the average rate of taxes, general, municipal and local, levied throughout the state during the previous year, which rate shall be ascertained from the records and files in the auditor's office, which tax shall be in lieu of all other taxes, state and local, and shall be payable into the state treasury.

SEC. 5. The taxes levied as provided by this chapter, shall become due and payable at the state treasury on the first day of February, following the levy thereof, and if said taxes are not paid as herein provided, it shall be the duty of the treasurer of state to collect the same by distress and sale of any property belonging to such company in the state, in the same manner as required of county treasurers, in like cases, by section eight hundred and fifty-eight of the code; and the record of the state board in such case shall be sufficient warrant therefor.

SEC. 6. *Provided*, however, That any telegraph line which may be owned and operated by any railroad company exclusively for the transaction of the business of such company, and which has been duly reported as such in the annual report of such company, and been duly taxed as part of the property thereof under the laws providing for the taxation of railway property, shall be exempt from the provisions of this act.

SEC. 7. If the officers of any company fail to make and file the report required by section two of this act such neglect shall not release its lines from taxation, but the state board shall proceed to assess the line notwithstanding, adding thereto thirty per centum on the assessable value thereof.

SEC. 8. All acts in conflict herewith are hereby repealed.

TITLE XI.

OF THE POLICE OF THE STATE.

CHAPTER 1

OF THE SETTLEMENT AND SUPPORT OF THE POOR.

SECTION 1330. The father, mother, and children of any poor person who is unable to maintain himself by work, shall, jointly or severally, relieve or maintain such poor person in such manner as may be approved by the trustees of the township where such poor person may be; but these officers shall have no control unless the poor person has applied for aid.

A child is not liable for the support of a parent except as provided by statute and such liability can be enforced only in the manner speci-

fied; but the obligation of a parent to support a child until maturity, is a perfect common law duty: *Dawson v. Dawson*, 12-512.

SEC. 1331. In the absence or inability of nearer relatives, the same liability shall extend to the grandparents, if of ability without personal labor, and to the male grandchildren who are of ability by personal labor or otherwise.

SEC. 1332. The word "father" in this chapter includes the putative father of an illegitimate child, and the question of his being the father may be tried in any action or proceeding to recover for, or to compel the support of an illegitimate child. But there shall be no obligation to proceed against the putative father before proceeding against the mother.

SEC. 1333. Upon the failure of such relatives to relieve or maintain a poor person who has made application for relief, the township trustees may apply to the circuit court of the county where such poor person resides, for an order to compel the same, and all provisions of this chapter relating to trustees shall apply to any other officers of a county, township, or incorporated town, or city, charged with the oversight of the poor.

SEC. 1334. At least ten days' notice of the application shall be given in writing, which shall be served as original notice in an action. In such proceedings the county is plaintiff, and the person to be charged is defendant.

SEC. 1335. The court shall make no order affecting a person not served, but may notify him at any stage of the proceedings.

SEC. 1336. The court may proceed in a summary manner to hear the allegations and proofs of the parties, and order any one or more of the relatives of such poor person who appear to be able, to relieve and maintain him, charging them, as far as practi-

cable, in the order above named, and for that purpose making new parties to the proceedings when necessary.

SEC. 1337. Such order may be for the entire or partial support of the poor person, and it may be for the support, either by money or by taking the poor person to a relative's house, or the order may assign the poor person for a certain time to one, and for another period to another relative, as may be adjudged just and convenient, taking into view the means of the several relatives; but no person shall be sent to the house of any relative who shall be willing to pay the amount necessary for his support.

Same.
R. § 1361.
C. 51, § 793.

SEC. 1338. If the court order the relief in any other manner than in money, it shall fix a just weekly value upon it.

Same.
R. § 1362.

SEC. 1339. The order may be specific in point of time, or it may be indefinite until the further order of the court, and may be varied from time to time when the circumstances require it, on the application of the trustees, of the poor person, or of any relative affected by it, upon ten days' notice being given.

Same.
R. § 1364.
C. 51, § 796.

Failure to comply.
R. § 1365.
C. 51, § 797.

SEC. 1340. When money is ordered to be paid, it shall be paid to such officer as the court may direct.

Appeal.
R. § 1366.
C. 51, § 798.

Abandonment:
property ordered seized.
R. § 1367.
C. 51, § 799.

SEC. 1341. If any person fails to render the support ordered, on the affidavit of one of the proper trustees showing the fact, the court may order execution for the amount due, rating any support ordered in kind as before assessed.

SEC. 1342. An appeal may be taken from such judgment as from other judgments of the circuit court.

[The printed code has "any" instead of "an" in the first line, as in the original.]

SEC. 1343. Whenever a father, or mother, abandons children, or husband abandons his wife, or wife her husband, leaving them chargeable, or likely to become chargeable, upon the public for their support, the trustees of the township where such abandoned person may be, upon application being made to them, may apply to the clerk of the circuit court or judge thereof of any county in which the parties reside, or in which any estate of such absconding father, mother, husband or wife, may be, for an order to seize the same, and, upon due proof of the above facts, the clerk of the court or judge may issue an order authorizing the trustees or the sheriff of the county to take into their possession the goods, chattels, things in action, and lands of the person absconding.

[The printed code omits "thereof" after "judge" in the sixth line, as it stands in the original.]

Seizure of.
R. § 1368.
C. 51, § 800.

When affecting real estate.
R. § 1369.
C. 51, § 801.

Inventory of:
R. § 1370.
C. 51, § 802.

SEC. 1344. By virtue of such order, the trustees or sheriff may take the property wherever the same may be found, and shall be vested with all the right and title to the personal property, and to the rents of the real property, which the person absconding had at the time of his departure.

SEC. 1345. Such order, when affecting any real estate, may be entered in the encumbrance book, and all sales, leases, and transfers of any such property, real and personal, made by the person after the issuing and entry of the order shall be void.

SEC. 1346. The trustees or sheriff shall immediately make an inventory of the property so seized by them, and return the same, together with the proceedings, to the court, there to be filed.

SEC. 1347. The court, upon inquiring into the facts and circumstances of the case, may discharge the order of seizure; but if it be not discharged, the court shall have power to direct from time to time what part of the personal property shall be sold and how, and how much of the proceeds of such sale, and of the rents and profits of the real estate shall be applied to the maintenance of the children, wife, or husband, of the person so absconding.

SEC. 1348. If the party against whom such order issued, return and support the person so abandoned, or give security to the county, satisfactory to the clerk of the circuit court, that such person shall not become chargeable to the county, the order shall be discharged by another order from such clerk, and the property taken and remaining restored.

SEC. 1349. The defendant may demand a jury in the trial contemplated, on the question of his ability and of his obligation to support a poor relative; and also on the questions of abandonment and liability to become a public charge as provided above, which demand may be made upon the inquiry contemplated above, and such inquiry shall take place on the request of the defendant unless it be ordered on the motion of the court itself with notice to the defendant.

[The word "questions" in the third line, as in the original, is "question" in the printed code.]

SEC. 1350. Any county having expended any money for the relief of a poor person under the provisions of this chapter, may recover the same from any of his kindred mentioned in sections one thousand three hundred and thirty, and one thousand three hundred and thirty-one of this chapter, by an action brought in any court having jurisdiction within two years from the payment of such expenses.

The kindred may be made liable as | §§ 1333, *et seq.*: *Boone Co. v. Buhl*,
here provided without any proceeding | 9-276.

SEC. 1351. A more distant relative who may have been compelled to aid a poor person, may recover from any one or more of the nearer relatives, and any one so compelled to aid may recover contribution from others of the same degree.

[The printed code omits "any" in the third line, as it stands in the original.]

SEC. 1352. Legal settlements may be acquired in the counties as follows:

1. Any person having attained majority, and residing in this state one year without being warned as hereinafter provided, gains a settlement in the county of his residence;

2. A married woman follows and has the settlement of her husband, if he have any within the state, and if she had a settlement at the time of marriage it is not lost by the marriage;

3. A married woman abandoned by her husband, may acquire a settlement as if she were unmarried;

4. Legitimate minor children follow and have the settlement of their father if he have one, but if he has none, then that of their mother;

Discharge of:
sale ordered.
R. § 1371.
C. '51, § 803.

Security given:
property re-
stored.
R. § 1372.
C. '51, § 804.

Trial by jury.
R. § 1373.
C. '51, § 805.

Action by
county.
R. § 1374.
C. '51, § 806.

By a relative.
R. § 1375.
C. '51, § 807.

Settlement:
how acquired.
R. § 1376.
C. '51, § 808.
10 G. A. ch. 40.

5. Illegitimate minor children follow and have the settlement of their mother, or if she have none then that of the putative father;

6. A minor whose parent has no settlement in this state, and a married woman living apart from her husband and having no settlement, and whose husband has no settlement in this state, residing one year in any county gains a settlement in such county;

7. A minor bound as an apprentice or servant, immediately upon such binding, if done in good faith, gains a settlement where his master has one.

A person choosing a residence while sane, and removing there, acquires a settlement as provided in this section, although he becomes insane and is removed to the hospital before the expiration of the year. Such removal to the hospital is not an interruption of his residence: *Washington Co. v. Mahaska Co.*, 47-57.

As to what constitutes a "residence" as here contemplated: *County of Cerro Gordo, v. County of Wright*, 50-439.

Lost
R. § 1377.
C. 51, § 809.

SEC. 1353. A settlement once acquired continues until it is lost by acquiring a new one.

Foreign pau-
pers.
R. § 1379.
C. 51, § 811.

SEC. 1354. A person coming from another state, and not having become a citizen of nor having a settlement in this state, falling into want and applying for relief, may be sent to the state whence he came, at the expense of the county, under an order of the circuit court, or judge, otherwise he is to be relieved in the county where he applies.

Warning to de-
part.
R. § 1380.
C. 51, § 812.

SEC. 1355. Persons coming from other states or counties who are, or of whom it is apprehended that they will become county charges, may be prevented from obtaining a settlement in a county by warning them to depart from the same or any township thereof, and thereafter they shall not acquire a settlement except by the requisite residence for one year uninterrupted by another warning.

How given and
served.
R. § 1381.
C. 51, § 813.

SEC. 1356. Such warning shall be in writing, and may be served upon the order of the trustees of the township, or of the board of supervisors, by any person; and such person shall make a return of his doings thereon to the board of supervisors; and, if not made by a sworn officer, it must be verified by affidavit.

Removal when
settlement is in
another
county.
R. § 1382.
C. 51, § 814.

SEC. 1357. When a poor person applying for relief in one county has a settlement in another, he may be removed to the county of his settlement, if he be able to be removed, upon the order of the trustees of the township or board of supervisors of the county where he applied for relief, and delivered to any officer charged with the oversight of the poor, in the county where his settlement is, giving written notice of the fact to the county auditor; or the trustees of the township, or board of supervisors of the county where he applied for relief, may, in their discretion, cause the auditor of the county where he has a settlement to be notified of his being a county charge, and, thereupon, it will become the duty of the latter board to order the removal of the poor person, if he is able to be removed, and, if not able, then to provide for his relief and for refunding all expenses incurred in his behalf.

[The word "refunding" in the last line as it stands in the original, is omitted in the printed code.]

Notice from the *auditor* of one county to the auditor of the other that relief was being furnished to a poor person having a residence in the latter county, held, sufficient: *County of Cerro Gordo v. County of Wright*, 50-439.

SEC. 1358. The county where the settlement is, shall be liable to the county rendering relief for all reasonable charges and expenses incurred in the relief and care of a poor person, if notice of relief being rendered is given to the county of the settlement within a reasonable time after the county of the settlement is ascertained, and for the charges of removal and expenses of support incurred after notice given, in all cases. County of settlement liable.
R. § 1383.
C. 51, § 815.

Action cannot be brought by one county against another for charges, etc., as here contemplated, until the claim is presented to the board of supervisors of the county liable, and payment demanded as provided in § 2610: *County of Cerro Gordo v.* *County of Wright*, 50-439. Ignorance of the fact of the pauper's settlement will not prevent the statute of limitations from running against such claim: *Washington Co. v. Mahaska Co.*, 47-57.

SEC. 1359. Such order of removal shall be binding on the county to which the removal is to be made, unless, within thirty days after receipt of the notice provided by section thirteen hundred and fifty-seven, it gives notice to the auditor of the county making such order of its intention to contest the same. In such case, the proper settlement of the pauper in such county may be tested and determined in an action brought to recover the amount already expended in his behalf. A notice of such action, signed by the county auditor, shall be served on the auditor of the other county, specifying the amount claimed and the facts out of which the claim arises, and no other proceeding shall be necessary to commence the action. The notice hereinbefore provided for, and a transcript of whatever other proceedings or papers there may be relative to the matter, shall be filed in the office of the clerk of the circuit court, and the cause may be entitled as of the county issuing the order as plaintiff against the county contesting the same as defendant. Order binding unless notice given.
R. § 1384.
C. 51, § 816.

SEC. 1360. The cause may be tried as other actions at law, but no pleadings are necessary, the only issues being whether the pauper had a settlement in the county to which he was ordered to be removed at the time of such order, and whether the amount claimed, or any part thereof, was actually and properly expended by the plaintiff county in his behalf; and the burden of proof shall be on the county making the order of removal. Trial: manner of.
R. § 1385.
C. 51, § 817.

SEC. 1361. The trustees of each township shall provide for the relief of such poor persons in their respective townships as should not in their judgment be sent to the county poor-house. But where a city of the first or second class or acting under special charter is embraced within the limits of any township, the board of supervisors may appoint an overseer of the poor, who shall have within said city all the powers and duties conferred by this chapter on the township. The relief thus furnished may be in the form of food, clothing, fuel, lights, rent, medical attendance or money; but exclusive of medical attendance the relief thus furnished shall not exceed the sum of two dollars per week for each person. And when in the opinion of the trustees or overseer the person asking aid, or any member of his family, is able to work, and such a con-

Relief to transient persons.

dition would not be oppressive, they may require the person or any member of his family who is able, as a condition on which relief shall be granted to earn the relief by labor on the public highway at the rate of not to exceed sixty-five cents per day. The trustees of townships or overseers of the poor are also authorized to grant relief by furnishing food to transient persons who appear needy, and who are able to work; but such relief shall not exceed the sum of forty cents per day; and they may require such able-bodied persons to labor faithfully on the streets or highway at the rate of five cents an hour in payment for and as a condition of granting the relief. Said labor shall be performed under the direction of the officer having charge of working streets or highways.

[A substitute for the original; 18th G. A., ch. 133.]

The township trustees having provided relief as here contemplated, the board of supervisors cannot limit the amount of such relief unless they establish a limit before the relief is rendered, under § 1363: *Hunter v. Jasper Co.*, 40-568.

"Medical attendance" is not restricted to the services of a physician, but may include nursing, etc., and the expense thereof is not limited to two dollars per week: *Scott v. Winnebago Co.*, 52-579

Soldiers or their families.
Same, § 2.

SEC. 1362. In no case shall a soldier, or the widows or families of soldiers, requiring public relief, be sent to the county poor house when they can and prefer to be relieved out of the poor house. All other persons in families requiring such aid, may, at the discretion of the board of supervisors, or the overseer of the poor under the supervision of the board of supervisors of such county, be sent to the county poor-house, or receive such aid out of poor house, as the board may deem necessary, not to exceed the extent as above provided.

[As amended by 16th G. A., ch. 26, and 17th G. A., ch. 37.]

Expense to be paid out of county treasury: limit.
Same, § 3.

SEC. 1363. All moneys expended as contemplated in the two preceding sections, shall be paid out of the county treasury, after the proper account rendered thereof shall have been approved by the board of supervisors of the respective counties, and in all cases the necessary appropriations therefor shall be made by the respective counties. But the board of supervisors may limit the amount of relief thus to be furnished.

Any limit to the amount of relief to be furnished must be fixed in advance, otherwise the board must pay the reasonable value of the services rendered: *Hunter v. Jasper Co.*, 40-568.

WHERE THERE IS NO POOR-HOUSE.

Township trustees have charge of.
R. § 1387.
C. § 51, § 819.

Application: how made.
R. § 1388.
C. § 51, § 820.

SEC. 1364. The trustees in each township, in counties where there is no poor-house, have the oversight and care of all poor persons in their township, and shall see that they receive proper care, until provided for by the board of supervisors.

SEC. 1365. The poor must make application for relief to the trustees of the township where they may be, and, if the trustees are satisfied that the applicant is in such a state of want as requires relief at the public expense, they may afford such relief as the necessities of the person require, and shall report the case forthwith to the board of supervisors, who may continue or deny relief as they find cause.

The township trustees may bind the county for medical services rendered at their instance to poor sick persons in their township while the board of supervisors is not in session. Whether the physician employed by the trustees has a right to compensation for services rendered after the trustees ought to have reported to the board, though he was not notified

of their failure to do so, *quare:*
Coolidge v. Mahaska Co., 24-211.

With the trustees rests, in the first instance, the determination of the question whether a poor person requires aid, and the nature of the relief to be given, and if made in good faith it binds the board of supervisors: *Armstrong v. Tama Co.*, 34-309.

SEC. 1366. All claims and bills for the care and support of the poor shall be certified to be correct by the proper trustees and presented to the board of supervisors, and, if they are satisfied that they are reasonable and proper, they are to be paid out of the county treasury. In no case shall a trustee, or either of the trustees, nor overseer of the poor, draw an order upon himself, or upon either of the board, for supplies for the poor, except such trustees or overseer has a contract to furnish such supplies.

The obligation of the county to support the poor is purely statutory: *Coolidge v. Mahaska Co.*, 24-211.

The board cannot limit the amount it will pay unless such limit be fixed before the relief is rendered, under § 1363: *Hunter v. Jasper Co.*, 40-568.

The action of the board is of a quasi judicial character, but the claimant, having presented his claim,

as required by § 2610, is not limited to an appeal from their action, but may bring suit against the county by ordinary proceedings: *Armstrong v. Tama Co.*, 34-309.

The certificate of the trustees need not be made at a regular meeting: *Hunter v. Jasper Co.* 40-568; and the board may waive such certificate: *Collins v. Lucas Co.*, 50-448.

SEC. 1367. The board, may in its discretion, allow and pay to poor persons who may become chargeable as paupers and who are of mature years and sound mind, and who will probably be benefited thereby, such sums or such annual allowance as will not exceed the charge of their maintenance in the ordinary mode.

SEC. 1368. If any poor person, on application to the trustees, is refused the required relief, he may apply to the board of supervisors, who, on examination into the matter, may direct the trustees to afford relief, or they may direct specific relief.

SUPERVISORS MAY CONTRACT.

SEC. 1369. The board of supervisors may enter into contract with the lowest bidder through proposals opened and examined at a regular session of the board, for the support of all the poor of the county for one year at a time, and may make all requisite orders to that effect; and shall require such contractor to give bonds in such sum as they deem sufficient to secure the faithful performance of the same.

SEC. 1370. When such a contract is made, the board shall, from time to time, appoint some person to examine and report upon the manner the poor are kept and treated, which shall be done without notice to the person contracting for their support; and, if upon due notice and inquiry, the board find that the poor are not reasonably and properly supported or cared for, they may,

Expense paid
by county.
R. § 1389.
C. '51, § 821.

Allowance for.
R. § 1390.
C. '51, § 822.

Appeal to
board of super-
visors.
R. § 1391.
C. '51, § 823.

Supervisors
may contract.
R. § 1393.
C. '51, § 825.

at a regular session, set aside the contract, making proper allowance for the time it has been in force.

[The original has "any" in place of "a regular" before "session" in the next to the last line. The change is probably made by the editor, however, and is therefore retained here as in the printed code.]

SEC. 1371. Any such contractor may employ a poor person in Employment of any work for which his age, health, and strength is competent, Paupers. R. § 1395. C. '51, § 827. subject to the control of the trustees, and in the last resort of the board of supervisors.

SUPERVISORS MAY ESTABLISH POOR-HOUSE.

SEC. 1372. The board of supervisors of each county may order People to vote. the establishment of a poor-house in such county whenever it is R. § 1396. C. '51, § 828. deemed advisable, and also the purchase of such land as may be deemed necessary for the use of the same, and may make the requisite contracts and carry such order into effect, provided the cost of said poor-house and land shall be first estimated by said board and approved by a vote of the people.

SEC. 1373. The board of supervisors, or any committee appointed by them for that purpose, may make all contracts and purchases requisite for the poor-house, and may prescribe rules or regulations for the management and government of the same, and for the sobriety, morality, and industry of its occupants.

SEC. 1374. The board may appoint a steward of the poor-house, who shall be governed in all respects by the rules and regulations of the board and its committees, and may be removed by the board at pleasure, and who shall receive such compensation, perform such duties, and give such security for their faithful performance as the board may appoint.

The steward of the poor-house is also steward of the poor-farm: *The State v. Platner*, 43-140. tract with the steward as to deprive themselves of the power of removal at pleasure: *Ibid.*

The board cannot make such con-

SEC. 1375. The steward shall receive into the poor-house any Duty of. person producing an order as hereafter provided, and enter in a R. § 1403. C. '51, § 835. book to be kept for that purpose the name and age, and the date of the reception of such person.

SEC. 1376. He may require of persons so admitted, such reasonable and moderate labor as may be suited to their ages and bodily strength, the proceeds of which, together with the receipts of the poor-farm, if there be one, shall be appropriated to the use of the poor-house in such manner as the board may determine.

The steward of the poor house is § 1374.
steward of the poor-farm: See note to

SEC. 1377. No person shall be admitted to the poor-house, unless upon the written order of a township trustee or member of the board of supervisors, and relief is to be furnished in the poor-house only, when the person is able to be taken there, unless in the cases hereinbefore provided.

SEC. 1378. The board may bind out such poor children of the Binding out. R. § 1407. C. '51, § 839. poor-house as they believe are likely to remain a permanent charge on the public, males until eighteen and females until the age of

sixteen, unless sooner married, on such terms and conditions as prescribed in the chapter concerning master and apprentices. And they may bind for shorter periods on such conditions as they may adopt.

SEC. 1379. When any inmate of the poor-house becomes able to support himself, the board may order his discharge.

Discharge of.

R. § 1408.

C. '51, § 840.

SEC. 1380. The board shall cause the poor-house to be visited at least once a month by one of their body, who shall carefully examine the condition of the inmates and the manner in which they are fed and clothed and otherwise provided for and treated, ascertain what labor they are required to perform, inspect the books and accounts of the steward, and look into all matters pertaining to the poor-house and its inmates and report to the board.

Visitation of
poor house.

R. § 1410.

C. '51, § 842.

SEC. 1381. The expense of supporting the poor-house shall be paid out of the county treasury in the same manner with other disbursements for county purposes; and in case the ordinary revenue of the county prove insufficient for the support of the poor, the board may levy a poor tax not exceeding one mill on the dollar, to be entered on the county list and collected as the ordinary county tax. The expense of the poor-house shall include such an amount of tuition for the instruction of the pauper children as the whole number of days' attendance of such pauper children is to the total number of days' attendance in the school at which such pauper children attend, and such amount shall be paid into the treasury of the district where said children attend.

Expenses:
how paid.

R. § 1412.

C. '51, § 844.

[As amended by the addition of the provision as to tuition, 17th, G. A., ch. 168. By 16th, G. A., ch. 149, the original section was amended so as to make the limit of the amount of tax one and one-half mills; "provided, that the provisions of this act shall not apply to counties in which the population is less than thirty-three thousand inhabitants."]

SEC. 1382. The board is invested with authority to let out the support of the poor, with the use and occupancy of the poor-house and farm for a period not exceeding three years.

Supervisors:

power.

R. § 1415.

C. '51, § 847.

CHAPTER 2.

OF THE CARE OF THE INSANE.

SECTION 1383. The hospital for the insane, located at Mount Pleasant, in Henry county, shall be known by the name of the Iowa hospital for the insane at Mount Pleasant; and the hospital for the insane, located at Independence, in Buchanan county, shall be known by the name of the Iowa hospital for the insane at Independence. Each of said hospitals shall be under the charge of five trustees, two of whom may be women, three of whom shall constitute a quorum for the transaction of business; and in future no member of the general assembly shall be eligible to that office. When the term of a trustee expires, his successor

Hospitals
established:
trustees: mem-
bers of general
assembly not
eligible.

18 G. A. ch. 109,

§ 1.

shall be appointed by the general assembly for four years; but no vacancy shall be filled until the number of trustees is reduced to the number provided in this section. No trustees shall receive pay for more than thirty days in any year.

SEC. 1384. The trustees shall be paid five cents per mile for each mile traveled, and five dollars per day during the time they are actually engaged in the discharge of their official duties, from the state treasury, out of any moneys not otherwise appropriated, by an order drawn by the secretary of the board and approved by the board. Each board of trustees shall hold an annual meeting upon the first Wednesday of October at the hospital, when they shall choose one of their number president and another secretary, and shall also choose a treasurer for the year then ensuing and until their successors are elected and qualified. They shall also hold quarterly meetings on the first Wednesdays in January, April and July.

[As amended by 17th G. A., ch. 100, § 1, changing the dates of meetings. The section is also modified as to compensation of trustees, by 17th G. A., ch. 92, inserted following § 3-26.]

SEC. 1385. The board of trustees, or a majority thereof, shall inspect the hospital under their charge at each quarterly meeting and a committee may visit the hospital monthly. The trustees shall make a record of their proceedings in books kept for the purpose; and at the annual meetings preceding the regular sessions of the general assembly, they shall make a report to the governor of the condition and wants of the hospital, which shall be accompanied by full and accurate reports of its superintendent and treasurer, and an account of all moneys received and disbursed.

SEC. 1386. The trustees shall have the general control and management of the hospital under their charge; and make all by-laws necessary for the government of the same, not inconsistent with the laws and constitution of the state, and conduct the affairs of the institution in accordance with the laws and by-laws regulating the same. They shall appoint a medical superintendent, and upon the nomination of the superintendent, shall appoint an assistant physician or physicians, a steward, and a matron, who shall reside in the hospital and be styled resident officers of the same, and be governed and subject to all the laws and by-laws for the government of the said institution. But the same person shall not hold the office of superintendent and steward. They may, also, in their discretion, and upon the nomination of the superintendent appoint a chaplain and prescribe his duties. The board of trustees shall, from time to time, fix the salaries and wages of the officers and other employes of the hospital, and certify the same to the auditor of state; and they may remove any officer or other employe of such institution.

[As amended, giving the superintendent the nomination of assistant physician, steward and matron; 15th G. A., ch. 53, § 1.]

SEC. 1387. The board of trustees may take, in the name of the state, and hold in trust for the hospital, any land conveyed or devised, and any money or other personal property given or bequeathed, to be applied for any purpose connected with the institution.

SEC. 1388. No trustee, or officer of the hospital, shall be, either directly or indirectly, interested in the purchase of building material, or any article for the use of the institution. Officers cannot be interested in contracts. Same, § 8.

SEC. 1389. No trustee shall be eligible to the office of steward or superintendent of the hospital during the term for which he was appointed, nor within one year after his term shall have expired. Trustees ineligible. Same, § 9.

SEC. 1390. The treasurer shall execute a bond to the state of Iowa for the use of the hospital, (naming which) in double the highest amount of money likely to come into his hands, and with such securities as the executive council shall require, conditioned that he will faithfully perform the duties of his office, and pay over and account for all money that shall come into his hands, and shall be filed with the secretary of state. He shall receive such compensation as the board shall fix, not exceeding one-half of one per cent. on all moneys paid out by him. Upon authority granted by the board, he may draw from the state treasury, out of money not otherwise appropriated, upon his order, approved by the superintendent and not less than two of the trustees, and under seal of the hospital, a sufficient amount quarterly for the purpose of defraying any deficiencies that may arise in the current expenses of the hospital, but the amount of each requisition shall in no case exceed sixteen dollars per month for each public patient in the hospital, taking the number of such patients on the fifteenth day of each month as the average number on which the estimate shall be made, the number then in the hospital to be certified to the auditor of state by the superintendent and steward, which certificate shall accompany the requisition. But no part of the money so drawn for current expenses shall be used in making improvements. Upon the presentation of such order to the auditor of state, he shall draw a warrant upon the treasurer of state for the amount therein specified, not exceeding the amount for each patient hereinbefore specified.

[As amended, providing that the requisitions of the treasurer shall be quarterly, instead of "from time to time," and changing the limit of the requisitions from twenty to sixteen dollars; 17th G. A., ch. 100, § 2.]

SEC. 1391. The superintendent of the hospital shall be a physician of acknowledged skill and ability in his profession. He shall be the chief executive officer of the hospital, and shall hold his office for six years unless sooner removed as above provided. He shall have the entire control of the medical, moral, and dietetic treatment of the patients, and he shall see that the several officers of the institution faithfully and diligently discharge their respective duties. He shall employ attendants, nurses, servants, and such other persons as he may deem necessary for the efficient and economical administration of the affairs of the hospital, assign them their respective places and duties, and may, at any time, discharge any of them from service.

SEC. 1392. The steward, under the direction of the trustees and superintendent, shall make all purchases for the hospital where and in such manner as they can be made on the best terms, keep the accounts, pay all employes, and have a personal superintendence of the farm. He shall take duplicate vouchers for all purchases made, and for all wages paid by him, which he shall

Superintendent of: chief executive officer.
13 G. A. ch. 109, § 11.

Steward to make purchases: keep accounts: take and preserve vouchers.
13 G. A. ch. 109, § 12.
14 G. A. ch. 135, § 1.

submit to the trustees at each of their quarterly meetings, for their examination and approval. Such settlement of accounts shall be made by the board of trustees in open session, and shall not be entrusted to a committee. The trustees shall, after examining and approving such vouchers, file one set of them with the auditor of state. The books and papers of the steward and treasurer shall be open at all times to the inspection of any one of the trustees, state officers, or members of the general assembly.

[As amended, by inserting the words "and superintendent" in the second line, 15th G. A., ch. 53, § 1.]

SEC. 1393. The superintendent shall provide an official seal, upon which shall be inscribed the statute name of the hospital under his charge, and the name of the state.
 Seal.
 13 G. A. ch. 109,
 § 13.

Assistant physicians. The assistant physicians shall be medical men of such character and qualifications as to be able to perform the ordinary duties of the superintendent during his necessary absence, or inability to act.
 Same, § 14.

COMMISSIONERS OF INSANITY.

Who may be: In each county there shall be a board of three commissioners of insanity. The clerk of the circuit court shall be a member of such board and clerk of the same. The other members shall be appointed by the judge of said court. One of them shall be a respectable practicing physician and the other a respectable practicing lawyer; and the appointment shall be made of persons residing as convenient as may be to the county seat. Such appointment may be made during the session of the court or in vacation; and, if made in vacation, it shall be by written order, signed by the judge and recorded by the clerk of the court. The appointment shall be for two years, and so that the term of one commissioner shall expire every year. The appointment of successors may be made at any time within three months prior to the expiration of the term of the incumbent, who shall hold his office until his successor is appointed and qualified. In the temporary absence or inability to act of two commissioners, the judge of the circuit court, if present, may act in the room of one, or the commissioner present may call to his aid a respectable practicing physician or lawyer, who, after qualifying as in other cases, may act in the same capacity. The record in such cases must show the facts.
 Judge of circuit
 court to ap-
 point.
 Same, § 15.
 12 G. A. ch. 179,
 §§ 1-6.

Organization of: They shall organize by choosing one of their number president. They shall hold their meetings for business at the office of the clerk of said court, unless, for good reasons, they shall fix on some other place, and shall also meet on notice from the clerk.
 Same, § 16.

Clerk of: duty. The clerk of said board of commissioners shall sign and issue all notices, appointments, warrants, subpoenas, or other process required to be given or issued by the commissioners, affixing thereto his seal as clerk of the circuit court. He shall file and preserve in his office all papers connected with any inquest by the commissioners, and properly belonging to his office, with all notices, reports, and other communications. He shall keep separate books
 Same, § 17.
 12 G. A. ch. 179,
 §§ 1-6.

in which to minute the proceedings of the board, and his entries therein shall be sufficiently full to show, with the papers filed, a complete record of their findings, orders and transactions. The notices, reports, and communications herein required to be given or made, may be sent by mail, unless otherwise expressed or implied; and the facts and date of such sending and their reception, must be noted on the proper record.

SEC. 1398. The said commissioners shall have cognizance of all applications for admission to the hospital, or for the safe keeping otherwise of insane persons within their respective counties, excepting in cases otherwise especially provided for. For the purpose of discharging the duties required of them, they shall have power to issue subpoenas and compel obedience thereto, to administer oaths, and do any act of a court necessary and proper in the premises.

SEC. 1399. Applications for admission to the hospital must be made in the form of an information, verified by affidavit, alleging that the person in whose behalf the application is made, is believed by the informant to be insane, and a fit subject for custody and treatment in the hospital; that such a person is found in the county, and has a legal settlement therein, if such is known to be the fact; and, if such settlement is not in the county, where it is, if known; or where it is believed to be, if the informant is advised on the subject.

SEC. 1400. On the filing of such information, the commissioners may examine the informant, under oath, and if satisfied there is reasonable cause therefor, shall at once investigate the grounds thereof. For this purpose they may require that the person for whom such admission is sought be brought before them, and that the examination be had in his presence; and they may issue their warrant therefor, and provide for the suitable custody of such person until their investigation shall be concluded. Such warrant may be executed by the sheriff, or any constable of the county; or, if they shall be of opinion, from such preliminary inquiries as they may make—and in making which they shall take the testimony of the informant, if they deem it necessary or desirable, and of other witnesses if offered,—that such course would probably be injurious to such person, or attended with no advantage, they may dispense with such presence. In their examination they shall hear testimony for and against such application, if any is offered. Any citizen of the county, or any relative of the person alleged to be insane, may appear and resist the application, and the parties may appear by counsel, if they elect. The commissioners, whether they dispense with the presence before them of such person or not, shall appoint some regular practicing physician of the county to visit such person and make a personal examination touching the truth of the information, and the actual condition of such person, and forthwith report to them thereon. Such physician may, or may not, be of their own number; and the physician so appointed and acting shall certify, under his hand, that he has, in pursuance of his appointment, made a careful personal examination as required; and that, on such examination, he finds the person in question insane, if such is the fact, and if otherwise, not insane; and in connection with his examination the said physician

Jurisdiction
and power.
Same, § 18.
12 G. A. ch. 179,
§ 1-6.

Applications
for admission.
Same, § 19.
12 G. A. ch. 179,
§ 1-6.

Investigation:
warrant: certi-
ficate of physi-
cian.
Same, § 20.
12 G. A. ch. 179,
§ 1-6.

shall endeavor to obtain from the relatives of the person in question, or from others who know the facts, correct answers, so far as may be, to the interrogatories hereinafter required to be propounded in such cases, which interrogatories and answers shall be attached to his certificate.

The interrogatories and answers | to whether the party was insane pre-appended to the certificate of the physician are not competent evidence as | previous to the examination: *Butler v. St. Louis Life Ins. Co.*, 45-93, 93.

Finding of commissioners.
Same, § 21.
12 G. A. ch. 179,
§ 16.

Discharge.

Issue warrant.

Execution of.

Superintendent to acknowledge.

Female: how taken.

Relative may execute warrant.

SEC. 1401. On the return of the physician's certificate, the commissioners shall, as soon as practicable, conclude their investigation, and shall find whether the person alleged to be insane, is insane; whether, if insane, a fit subject for treatment and custody in the hospital; whether the legal settlement of such person is in their county, and, if not in their county, where it is, if ascertained. If they find such person is not insane, they shall order his immediate discharge, if in custody. If they find such person insane, and a fit subject for custody and treatment in the hospital, they shall order said person to be committed to the hospital, and unless said person so found to be insane (or some one in his or her behalf) shall appeal from the finding of said commissioners, they shall

forthwith issue their warrant, and a duplicate thereof, stating such finding, with the settlement of the person, if found; and, if not found, their information, if any, in regard thereto, authorizing the superintendent of the hospital to receive and keep such person as a patient therein. Said warrant and duplicate, with the certificate and finding of the physician, shall be delivered to the sheriff of the county, who shall execute the same by conveying such person to the hospital, and delivering him, with such duplicate and physician's certificate, and finding, to the superintendent thereof.

The superintendent, over his official signature, shall acknowledge such delivery on the original warrant, which the sheriff shall return to the clerk of the commissioners, with his costs and expenses endorsed thereon. If neither the sheriff nor his deputy is at hand, or if both are otherwise engaged, the commissioners may appoint

some other suitable person to execute the warrant in his stead, who shall take and subscribe an oath faithfully to discharge his duty, and shall be entitled to the same fees as the sheriff. The sheriff, or any other person so appointed, may take to his aid such assistance as he may need to execute such warrant; but no female shall thus be taken to the hospital without the attendance of some other female, or some relative. The superintendent, in his acknowledgment of delivery, must state whether there was any such person in attendance, and give the name or names, if any. But if any relative or immediate friend of the patient who is a suitable person, shall so request, he shall have the privilege of executing such warrant in preference to the sheriff, or any other person, and without taking such oath; and for so doing he shall be entitled to his necessary expenses but to no fees. The requirements of this and preceding sections are modified by the provisions of the next section.

[As amended, so as to provide for an appeal; 18th G. A., ch. 152, § 6; the other sections of the act being inserted following.]

[Eighteenth General Assembly, Chapter 152.]

SEC. 1. Any person found to be insane by the commissioners of insanity, may appeal to the circuit court by giving the clerk of said court notice in writing that he or she appeals from said finding, which notice may be signed by the party, his or her attorney, agent or guardian.

SEC. 2. Such appeal may be taken at any time within ten days after the filing of the finding of said commissioners.

SEC. 3. The cause, when thus appealed, shall be placed upon trial of the docket by the clerk of said court, and stand for trial anew in the circuit court.

SEC. 4. If any person found to be insane by the commissioners of insanity takes an appeal from such finding, such person shall be discharged from custody pending such appeal, unless the commissioners, for any reason, find that such person cannot, with safety, be allowed to go at large, in which case they shall require that such patient shall be provided for, as provided in section fourteen hundred and three of the code, until such appeal can be tried and determined.

SEC. 5. If, upon the trial, such person is found not insane, final order. the court shall order his or her immediate discharge, if in custody. If such person is found to be insane, and a fit subject for custody and treatment in the hospital, the court shall order that such person be committed to the hospital, and the clerk of the court shall issue a warrant to carry said finding and order into effect, which warrant and the proceedings on and under it, shall be substantially the same as are provided for in section fourteen hundred and one, of chapter 2, title 11, of the code.

[Sec. 6 amends § 1401; which see.]

SEC. 1402. If the commissioners find that the person so committed to the hospital has, or probably has, a legal settlement in some other county, they shall immediately notify the auditor of such county of such finding and commitment; and the auditor so notified shall thereupon inquire and ascertain, if possible, whether the person in question has a legal settlement in that county, and shall immediately notify the superintendent of the hospital and the commissioners of the county from which such person was committed, of the result of such inquiry. If the legal settlement of a person so committed cannot for a time be ascertained, and is afterwards found, the notices so required shall then be given.

SEC. 1403. If any person found to be insane and a fit subject for custody and treatment in the hospital, cannot at once be admitted therein for want of room, or for any other cause, and cannot with safety be allowed to go at liberty, the commissioners shall require that such patient shall be suitably provided for otherwise until such admission can be had, or until the occasion therefor no longer exists. Such patients may be cared for either as private or as public patients. Those shall be treated as private patients, whose relations or friends will obligate themselves to take care of and provide for them without public charge. In such case, the commissioners shall appoint some suitable person a special custodian, who shall have authority, and who shall, in all suitable ways, restrain, protect, and care for such

When settle-
ment is in an-
other county:
Same, § 22.

When person
cannot be sent
to hospital:
special custod-
ian appointed.
Same, § 28.

patient, in such manner as to best secure his safety and comfort, and to best protect the person and property of others. In the case of public patients, the commissioners shall require that they be in like manner restrained, protected, and cared for by the board of supervisors at the expense of the county, and they may, accordingly, issue their warrant to such board, who shall forthwith comply with the same. If there is no poor-house for the reception of such patients, or if no more suitable place can be found, they may be confined in the jail of the county in charge of the sheriff.

SEC. 1404. On application to the commissioners in behalf of persons alleged to be insane, and whose admission to the hospital is not sought, made substantially in the manner above prescribed, and asking that provision be made for their care as insane—either public or private—within the county, and on proof of their insanity and need of care as above pointed out, the commissioners may provide for their restraint, protection and care, as in the case of other applications.

SEC. 1405. On information laid before the commissioners of any county that a certain insane person in the county is suffering from want of proper care, they shall forthwith inquire into the matter, and, if they find the information well founded, they shall make all needful provisions for the care of such person, as provided in other cases.

SEC. 1406. Insane persons who have been under care, either as public or private patients, outside of the hospital, by authority of the commissioners of any county, may, on application to that effect, be transferred to the hospital whenever they can be admitted thereto, on the warrant of such commissioners. Such admission may be had without another inquest, at any time within six months after the inquest already had, unless the commissioner shall deem further inquest advisable.

SEC. 1407. In each case of application for admission to the hospital, correct answers to the following interrogatories, so far as they can be obtained, shall accompany the physician's certificate; and if, on further examination after the answers are stated, any of them are found to be erroneous, the commissioners shall cause them to be corrected:

1. What is the patient's name and age? Married or single? If any children, how many? Age of youngest child?
2. Where was the patient born?
3. Where is his (or her) place of residence?
4. What has been the patient's occupation?
5. Is this the first attack? If not, when did the others occur, and what was their duration?
6. When were the first symptoms of this attack manifested, and in what way?
7. Does the disease appear to be increasing, decreasing, or stationary?
8. Is the disease variable, and are there rational intervals? If so, do they occur at regular periods?
9. On what subjects, or in what way is derangement now manifested? State fully.
10. Has the patient shown any disposition to injure others?
11. Has suicide ever been attempted? If so, in what way? Is the propensity now active?

When admission to hospital is not desired.
Same, § 29.

When suffering from want of care.
Same, § 30.
12 G. A. ch. 179.

May be transferred to hospital.
13 G. A. ch. 109,
§ 33.

Interrogatories to be answered.
Same, § 34.

12. Is there a disposition to filthy habits, destruction of clothing, breaking of glass, etc?

13. What relatives, including grandparents and cousins, have been insane?

14. Did the patient manifest any peculiarities of temper, habits, disposition, or pursuits, before the accession of the disease?—any predominant passion, religious impressions, etc?

15. Was the patient ever addicted to intemperance in any form?

16. Has the patient been subject to any bodily disease; epilepsy, suppressed eruptions, discharges of sores, or ever had any injury of the head?

17. Has restraint or confinement been employed? If so, what kind, and how long?

18. What is supposed to be the cause of the disease?

19. What treatment has been pursued for the relief of the patient? Mention particulars and effects.

20. State any other matter supposed to have a bearing on the case.

SEC. 1408. On the application of the relations or immediate friends of any patient in the hospital who is not cured, and who cannot be safely allowed to go at liberty, the commissioners of the county where such patient belongs, on making provisions for the care of such patient within the county as is in other cases, may authorize his discharge therefrom; *provided*, no patient who may be under criminal charge or conviction shall be discharged without the order of the district court or judge, and notice to the district attorney of the proper district as hereinbefore provided.

*Discharge on application of friends.
Same, § 41.*

SEC. 1409. Whenever it shall be shown to the satisfaction of the commissioners of insanity of any county, that cause no longer exists for the care within the county of any particular person as an insane patient, they shall order the immediate discharge of such person.

*Discharge of:
cared for in county.
Same, § 47.*

SEC. 1410. Whenever the commissioners issue their warrant for the admission of a person to the hospital, and funds to pay the expense thereof are needed in advance, they shall estimate the probable expense of conveying such person to the hospital, including the necessary assistance, and not including the compensation allowed the sheriff; and on such estimate, certified by the clerk, the auditor of the county shall issue his order on the treasury of the county in favor of the sheriff or other person entrusted with the execution of such warrant; the sheriff, or other person executing such warrant shall accompany his return with a statement of the expenses incurred; and the excess or deficiency may be deducted from or added to his compensation, as the case may be. If funds are not so advanced, such expenses shall be certified and paid in the manner above prescribed on the return of the warrant. When the commissioners order the return of a patient, compensation and expenses shall be in like manner allowed.

*Expenses estimated and paid in advance from county treasury.
Same, § 48.*

SEC. 1411. The warrant of the commissioners of insanity, authorizing the admission of any person to the hospital as a patient, accompanied by a physician's certificate as herein provided, shall operate to shield the superintendent and other officers of the hospital against all liability to prosecution of any kind on

*Warrant and certificate:
superintendent not liable to prosecution.
Same, § 51.*

account of the reception and detention of such person in the hospital; *provided*, such detention shall be otherwise in accordance with the laws and by-laws regulating its management.

INSANE PRISONERS.

SEC. 1412. If any person in prison charged with a crime, shall, Commissioners at any time before indictment is found against him, at the request to make inquiry: may be of any citizen be brought before the commissioners in the manner sent to hospital provided by law, and if it shall be found by them that such and restored to reason. person was insane when he committed the offense; or if any person R. §§ 1458, 1459.

son in prison shall, after the commission of an offense, and before conviction, become insane, and if at the request of any citizen an inquest be instituted as provided for in this chapter, and if the commissioners shall find that such person became insane after the commission of the crime of which he stands charged or indicted, and is still insane, they shall issue their warrant authorizing and requiring the superintendent of either hospital to receive and keep the person as a patient therein. In such case the warrant can only be executed by the sheriff or his deputy; and no delivery of the insane prisoner to any other person than the superintendent of the hospital shall exonerate the sheriff from his liability for the custody of such prisoner, and any such lunatic may, when restored to reason, be prosecuted for any offense committed by him previous to such insanity.

Cannot be discharged until district attorney is notified.
R. § 1460.

SEC. 1413. When any lunatic shall be confined in either hospital under the preceding section, the superintendent in whose charge he may be, shall, as soon as such lunatic is restored to his reason, give notice thereof to the district attorney of the proper county, and retain such lunatic in custody for such reasonable time thereafter as may be necessary for said attorney to cause a warrant to issue and to be served, by virtue whereof the said person so restored to reason shall again be returned to the jail of the proper county to answer to the offense alleged against him.

Becoming insane after conviction: governor suspend execution of sentence.
R. § 1464.

SEC. 1414. If any person, after being convicted of any crime or misdemeanor, and before the execution in whole or part of the sentence of the court, becomes insane, the governor shall inquire into the facts, and he may pardon such lunatic, or commute or suspend, for the time being, the execution in such manner and for such a period as he may think proper, and may, by his warrant to the sheriff of the proper county or warden of either penitentiary, order such lunatic to be conveyed to the hospital and there kept until restored to reason. If the sentence of any such lunatic be suspended by the governor, the sentence of the court shall be executed upon him after such period of suspension has expired, unless otherwise directed by the governor.

CUSTODIAN OF INSANE PERSONS.

Guilty of misdemeanor.
13 G. A. ch. 109,
§ 32.

SEC. 1415. Any person having care of an insane person, and restraining such person whether in the hospital or elsewhere either with or without authority, who shall treat such person with wanton severity, harshness, or cruelty, or shall in any way abuse such

person, shall be guilty of a misdemeanor, besides being liable in an action for damages.

[The words "whether in the hospital or elsewhere" in the second line, as they stand in the original, are omitted in the printed code.]

SEC. 1416. No person supposed to be insane shall be restrained of his liberty by any other person, otherwise than in pursuance of authority obtained as herein required, excepting to such extent as may be necessary for the safety of person and property until such authority can be obtained.

Insane cannot be restrained except by authority.

Same, § 31.

SUPERINTENDENTS—TRUSTEES—REGULATIONS.

SEC. 1417. When the superintendent of the hospital has been duly notified as herein required, that a patient sent to the hospital from one county has a legal settlement in another county, he shall thereafter hold and treat such patient as from the latter county; and such holding shall apply to expenses already incurred in behalf of such patient and remaining unadjusted.

When sent from one country whose settlement is in another. Same, § 23.

SEC. 1418. Expenses incurred as hereinafter provided by one county on account of an insane person whose legal settlement is in another county, shall be refunded, with lawful interest thereon, by the county of such settlement, and shall be presented to the board of supervisors of the county sought to be charged, allowed, and paid the same as other claims. If the settlement is denied by the latter board, they may serve a notice similar to that provided for in section thirteen hundred and fifty-nine, of chapter one of this title for cases of removal; and all the provisions of that chapter in regard to the determination of a disputed claim upon an order of removal shall apply to the change of settlement of an insane person.

Expenses may be recovered of the county of the settlement. Same, § 24.

SEC. 1419. Patients in the hospital having no legal settlement in the state, or whose legal settlement cannot be ascertained, shall be supported at the expense of the state, and the trustees may authorize the superintendent to remove any patient at the expense of the state if they see proper.

When no settlement state to pay. Same, § 25.

SEC. 1420. All patients in the hospital shall be regarded as standing upon an equal footing, and the several patients, according to their different conditions of mind and body, and their respective needs, shall be provided for and treated with equal care; but if the relative or friends of any patient shall desire it, and shall pay the expense thereof, such patient may have special care, and may be provided with a special attendant, as may be agreed upon with the superintendent. In such cases, the charges for such special care and attendance shall be paid quarterly in advance.

Special care may be given when paid for by relatives. Same, § 26.

SEC. 1421. The relatives or friends of any patient in the hospital shall have the privilege of paying any portion or all of the expenses of such patients therein; and the superintendent shall cause the account of such patient to be credited with any sums so paid.

Expenses paid by relatives. Same, § 27.

SEC. 1422. If at any time it may become necessary, for want of room or other cause, to discriminate in the general reception of patients into the hospital, a selection shall be made as follows:

Discrimination between patients. Same, § 35.

1. Recent cases, *i. e.*, cases of less than one year's duration, shall have the preference over all others;
2. Chronic cases, *i. e.*, where the disease is of more than one year's duration, presenting the most favorable prospects of recovery shall be next preferred;
3. Those for whom application has been longer on file, other things being equal, shall be next preferred;
4. Where cases are equally meritorious in all other respects, the indigent shall have the preference.

SEC. 1423. If any patient shall escape from the hospital, the superintendent shall cause immediate search to be made for him; and, if he cannot soon be found, shall cause notice of such escape to be forthwith given to the commissioners of the county where the patient belongs; and if such patient is found in their county, the commissioners shall cause him to be returned, and shall issue their warrant therefor as in other cases, unless the patient shall be discharged, or unless, for good reasons, they shall provide for his care otherwise, of which they shall notify the superintendent.

*Escape of.
Same, § 39.*

SEC. 1424. Any patient who is cured shall be immediately discharged by the superintendent. Upon such discharge, the superintendent shall furnish the patient, unless otherwise supplied, with suitable clothing and a sum of money, not exceeding twenty dollars, which shall be charged with the other expenses in the hospital of such patient. The relatives of any patient not susceptible of cure by remedial treatment in the hospital, and not dangerous to be at large, shall have the right to take charge of and remove such patient on consent of the board of trustees. In the interim of the meetings of the board, the consent of two of the trustees shall be sufficient.

*Discharge of
when cured.
Same, § 40.
12 G. A. ch. 179,
§ 7.*

SEC. 1425. The board of trustees shall order the discharge or removal from the hospital of incurable and harmless patients, whenever it is necessary to make room for recent cases; in the interim between the meetings of the board, the superintendent, in connection with two trustees, shall possess and exercise the same power.

*Incurable and
harmless re-
moved.
13 G. A. ch. 109,
§ 42*

SEC. 1426. When patients are discharged from the hospital by the authorities thereof without application therefor, notice of the order of discharge shall at once be sent to the commissioners of the county where they belong; and the commissioners shall forthwith cause them to be removed, and shall at once provide for their care in the county as in other cases, unless such patients are discharged as cured.

*Notice of dis-
charge sent
commission-
ers.
Same, § 43.*

SEC. 1427. The trustees shall, from time to time, fix the sum to be paid per month for the board and care of the patients, which shall not exceed the sum of sixteen dollars per month, and the monthly sum so fixed shall be the sum the said hospital shall be entitled to demand for keeping any patient; and the certificate of the superintendent, attested by the seal of the hospital, shall be evidence in all places of the amount due as fixed.

*Compensation
for keeping
fixed.
Same, § 44.
14 G. A. ch. 135,
§ 1.*

[As amended by 17th G. A., ch. 84]

SEC. 1428. The superintendent shall certify to the auditor of state on the first day of January, April, July and October, the amount, not previously certified by him, due to said hospital, from the several counties having patients chargeable thereto; and

*Superintend-
ent to certify
to auditor of
state.
13 G. A. ch. 109,
§ 45*

said auditor shall pass the same to the credit of the hospital. The auditor shall, thereupon, notify the county auditor of each county so owing of the amount thereof, and charge the same to said county; and the board of supervisors shall levy a tax in said county for said amount, and pay the amount due the state into the state treasury; and should they within one year from the taking effect of this act fail to levy such tax sufficient to pay the amount now due the state, as shown by the books of the auditor of state, and shall fail at the time of levying other taxes thereafter to levy the tax aforesaid to an amount sufficient to pay the sum then due the state, it shall be the duty of the auditor of state to charge such delinquent county with a penalty of three per centum per month upon the amount of indebtedness then six months due, for each month until payment thereof and penalty thereon be made.

On failure to
levy insane
tax.

And should any county, within one year from the taking effect of this act, fail to levy such tax sufficient to pay the amount then due the state, and shall fail, at the time of levying other county taxes thereafter to levy the tax aforesaid to an amount sufficient to pay the indebtedness subsequently incurred, it shall be the duty of the attorney-general, upon request of the executive council, to bring, in the name of the state, an action against any county so failing as aforesaid, to enforce the levying of said tax.

[As amended; the provision as to charging the delinquent county a penalty being added by 17th G. A., ch. 183, § 1, and that as to bringing action to enforce the levy, by 16th G. A., ch. 28. The other sections of 17th G. A., ch. 183, are as follows:]

SEC. 2. It shall be the duty of the county treasurer on collection of the taxes herein required to be levied to pay into the state treasury the amount due and owing from his county at the times and in the manner required for the payment of state taxes collected.

Duty of county
treasurer.

SEC. 3. Taxes levied and collected in any county for the purpose named in this act, shall be used only to defray the expenses of the insane chargeable to such county, and the costs incident thereto, and shall not be diverted to any other purpose, nor be transferred to any other fund.

Insane tax
shall not be
diverted to
other fund.

SEC. 4. Any member of the board of supervisors, or any county treasurer who shall violate any of the provisions of this act, shall be liable to a fine of not less than one hundred nor more than five hundred dollars, to be recovered in an action brought against him in the district court of his county, in the name of the state, by the attorney-general.

SEC. 5. The auditor of state shall notify the several county auditors, and county treasurers of the provisions of this act, and it shall be the duty of said officers to present said notice to the board of supervisors at their first meeting thereafter.

Duty of state
and county
auditor.

SEC. 1429. When the superintendent of the hospital, in obedience to a subpoena, attends any court of the county in which the hospital is situated as witness for either party in the case of a person on trial for a criminal offense, and the question of the sanity of such person is raised, he shall be allowed, on such account, his necessary and actual expenses, and such daily pay as is allowed.

Fees of super-
intendent
when attend-
ing court.
Same, § 62.

to other witnesses, and such expenses and pay shall be paid by the state. When compelled so to attend in civil cases, he shall be entitled to the same compensation, to be paid by the party requiring his attendance.

SEC. 1430. The superintendent shall affix the seal of the hospital to any notice, order of discharge, or other paper required to be given by him or issued.

Blanks sent commissioners. The trustees of the hospital shall provide for furnishing the commissioners of the counties entitled to send patients to the hospital with such blanks for warrants, certificates, etc., as will enable them with regularity and facility to comply with the provisions of this chapter; and, also, with copies of the by-laws of the hospital when printed.

Rules adopted: who to form. The superintendents of the two hospitals and the governor of the state, shall adopt such regulations as they may deem expedient in regard to what patients, or class of patients, shall be admitted to and provided for in the respective hospitals; or from what portion of the state patients, or certain classes of patients, may be sent to each or either hospital; and they may change such regulations from time to time as they may deem best; and they shall make such publication of these regulations as they may deem necessary for the information of those interested. The regulations so adopted shall be conformed to by the parties interested.

Estates of insane patients liable for their support. The provisions herein made, for the support of the insane at public charge, shall not be construed to release the estates of such persons from liability for their support, and the auditors of the several counties, subject to direction of the board of supervisors, are authorized and empowered to collect from the property of such patients any sums paid by the county in their behalf as herein provided; and the certificate from the superintendent and the notice from the auditor of state, stating the sums charged in such cases, shall be presumptive evidence of the correctness of the sums so stated. If the board of supervisors in the case of any insane patient, who has been supported at the expense of the county, shall deem it a hardship to charge the estate of any such patient with such cost of supporting the patient, they may relieve such estate or estates from any part or all of such burden as may seem to them reasonable and just.

[As amended, omitting the provisions as to recovery of the charges for the support of the insane person from his relatives, or those legally bound for his support; 15th G. A., ch. 26.]

The "relatives" contemplated in this section are only such as are legally bound for the support of the insane person. A father is not legally bound to support his adult children. The provisions of § 1330 *et seq.*, as to the support of paupers, have no application under this section: *Monroe Co. v. Teller*, 51-670.

Under this section as amended a husband is not liable for the expense of treating an insane wife sent to the hospital by the commissioners of insanity. Such expense is not family expense within the meaning of § 2214: *County of Delaware v. McDonald*, 46-170.

Meaning of term "insane": Idiots not admitted. 13 G. A. ch. 109, § 51.

SEC. 1434. The term "insane," as used in this chapter, includes every species of insanity or mental derangement. The term "idiot," is restricted to persons foolish from birth, supposed to be naturally without mind. No idiot shall be admitted to the hospital.

VISITING COMMITTEE.

SEC. 1435. There shall be a visiting committee of three, one of whom at least shall be a woman, appointed by the governor, to visit the insane asylums of the state at their discretion, and without giving notice of their intended visit; who may, upon such visit, go through the wards unaccompanied by any officer of the institution, with power to send for persons and papers, and to examine witnesses on oath, to ascertain whether any of the inmates are improperly detained in the hospital, or unjustly placed there, and whether the inmates are humanely and kindly treated, with full power to correct any abuses found to exist; and any injury inflicted upon the insane shall be treated as an offense, misdemeanor, or crime, as the like offense would be regarded when inflicted upon any other citizen outside of the insane asylums. They shall have power to discharge any attendant or employe who is found to have been guilty of misdemeanor meriting such discharge; and in all these trials for misdemeanor, offense, or crime, the testimony of patients shall be taken and considered for what it is worth, and no employe at the asylum shall be allowed to sit upon any jury before whom these cases are tried. Said committee shall make an annual report to the governor.

As to compensation of visiting committee, see § 3826.

SEC. 1436. The names of this visiting committee and their post-office address, shall be kept posted in every ward in the asylum, and every inmate in the asylum shall be allowed to write once a week what he or she pleases to this committee. And any member of this committee who shall neglect to heed the calls of the patient to him for protection, when proved to have been needed, shall be deemed unfit for his office, and shall be discharged by the governor.

[As amended; 15th G. A., ch. 53, § 2.]

SEC. 1437. Every person confined in any insane asylum, shall be furnished by the superintendent or party having charge of such person, at least once in each week, with suitable materials for writing, enclosing, sealing, and mailing letters, if they request the same, unless otherwise ordered by the visiting committee, which order shall continue in force until countermanded by said committee.

SEC. 1438. The superintendent or party having charge of any person under confinement, shall receive, if requested to do so by the person so confined, at least one letter in each week addressed to one of the visiting committee, without opening or reading the same, and without delay to deposit it in a post-office for transmittal by mail, with a proper postage stamp affixed thereto; and to deliver to said person any letter (without opening or reading the same) written to him or her by one of the visiting committee. But all other letters written by, or to, the person so confined may be examined by the superintendent, and, if in his opinion the delivery of such letters would be injurious to the person so confined, he may retain the same.

[As amended; 15th G. A., ch. 53, § 2.]

SEC. 1439. In the event of the sudden and mysterious death

Appointed by
governor;
power and
duties.
14 G. A. ch. 91,
§ 1.

Inmates of hos-
pital allowed
to write.
Same, § 2.

Superintend-
ent to furnish
writing ma-
terial.
Same, § 3.

Letters to be
deposited in
postoffice.
Same, §§ 4, 5.

Inquest held.
Same, § 6.

of any person so confined, a coroner's inquest shall be held as provided for by law in other cases.

Punishment
for violation of
law.
Same, § 7.

SEC. 1440. Any person neglecting to comply with, or wilfully and knowingly violating any of the provisions of the five preceding sections, shall, upon conviction thereof, be punished by imprisonment for a term not exceeding three years, or by fine not exceeding one thousand dollars, or by both fine and imprisonment in the discretion of the court, and by ineligibility for this office in the future, and, upon trial had for such offense, the testimony of any person, whether insane or otherwise, shall be taken and considered for what it is worth.

Visits of.
Same, § 8.

SEC. 1441. At least one member of said committee shall visit the asylums for the insane every month.

May be dis-
charged by dis-
trict Judge.
12 G. A. ch. 179,
§ 9.
13 G. A. ch. 109,
§ 36.

SEC. 1442. On a statement in writing, verified by affidavit, addressed to a judge of the district or circuit court of the county in which the hospital is situated, or of the county in which any certain person confined in the hospital has his legal settlement, alleging that such person is not insane, and is unjustly deprived of his liberty, such judge shall appoint a commission of not more than three persons, in his discretion, to inquire into the merits of the case, one of whom shall be a physician, and if two or more are appointed, another shall be a lawyer. Without first summoning the party to meet them, they shall proceed to the hospital and have a personal interview with such person, so managed as to prevent him, if possible, from suspecting its object; and they shall make any inquiries and examinations they may deem necessary and proper of the officers and records of the hospital touching the merits of the case. If they shall judge it prudent and advisable, they may disclose to the party the object of their visit, and either in his presence or otherwise, make further investigation of the matter. They shall forthwith report to the judge making the appointment, the result of their examination and inquiries. Such report shall be accompanied by a statement of the case, made and signed by the superintendent. If, on such report and statement, and the hearing of the testimony, if any is offered, the judge shall find the person not insane, he shall order his discharge. If the contrary, he shall so state, and authorize his continued detention. The finding and order of the judge, with the report and other papers, shall be filed in the office of the clerk of the court over which such judge presides, who shall enter a memorandum thereof on his record, and forthwith notify the superintendent of the hospital of the finding and order of the judge, and the superintendent shall carry out the order. The commissioners appointed as provided in this section, shall be entitled to their necessary expenses and a reasonable compensation, to be allowed by the judge, and paid by the state out of any funds not otherwise appropriated; *provided*, that the applicant shall pay the same if the judge shall find that the application was made without probable grounds, and shall so order.

SEC. 1443. The commission so provided for, shall not be repeated oftener than once in six months in regard to the same party; nor shall such commission be appointed in the case of any patient within six months of the time of his admission.

SEC. 1444. All persons confined as insane shall be entitled to the benefit of the writ of *habeas corpus*, and the question of insanity shall be decided at the hearing, and if the judge shall decide that the person is insane, such decision shall be no bar to the issuing of the writ a second time, whenever it shall be alleged that such person has been restored to reason.

SEC. 1445. Any officer required herein to perform any act and any person accepting an appointment under the provisions of this chapter, and willfully refusing or neglecting to perform his duty as herein prescribed, shall be guilty of misdemeanor, besides being liable to an action for damages.

CHAPTER 3.

OF DOMESTIC AND OTHER ANIMALS.

SECTION 1446. Every owner of swine, sheep, or goats shall restrain the same from running at large.

[A substitute for the original section, adding goats and omitting the provision as to liability of the owner for damages, and as to distraint of stock therefor; 15th G. A., ch. 70, § 2.]

SEC. 1447. Any person may take possession of any stallion, jack, bull, boar, or buck, found at large in the county in which such person resides, and give notice thereof to any constable in the county, who shall sell the animals so taken at public auction to the best bidder for cash, having given ten days' notice of the time and place of sale, by posting the same in writing in three public places in the township wherein such animals were found at large. Out of the proceeds of sale he may pay all costs and charges of keeping and any damage done by said animals, and shall pay the remainder of said proceeds into the county treasury, to be applied to the use of the county, unless legal proof be made to the county auditor by the owner of said animals of his right thereto; such proof may be made at any time within twelve months from the sale, and thereupon said auditor shall order the proper amount to be paid to the owner out of any money in the treasury not otherwise appropriated. But if the owner or any person for him, shall, on or before the day of sale, pay the costs and charges thus far made, and all damages, and make satisfactory proof of his ownership, the constable shall release the animals to him without proceeding further.

Under a somewhat similar provision (6th G. A., ch. 193, § 3, Rev., § 2^r9), it was said that the law does not contemplate that the officer shall

have a process in order to make the sale provided for: *Dalby v. Wolf*, 14-228.

The provision as to stallions is not

applicable to colts until they are of such age as to be troublesome to mares or dangerous to be at large: | *Aylesworth v. C. R. I. & P. R. Co.*, 30-459.

Domestic animals doing damage restrained.
R. § 1548.
C. § 51, § 913.

Recovery when stock is restrained from running at large.

SEC. 1448. When any person is injured in his lands enclosed by a lawful fence by any kind of domestic animal, he may recover his damages by an action against the owner, or by distraining the animals doing the damage; but if they were lawfully on the adjoining land, and escaped therefrom by reason of the neglect of the person suffering the damage to maintain his part of the division fence, the owner of the animals shall not be liable for such damage, and if the party injured elects to recover by action against the owner of the stock, no appraisement need be made by the trustees as in cases of distress; and in counties where by police regulation stock is restrained from running at large, any person injured in his improved or cultivated lands by any domestic animal may recover his damages as provided in section six of this act and sections one thousand four hundred and fifty-four, one thousand four hundred and fifty-five, and one thousand four hundred and fifty-six of the code, whether the lands whereon the injury was done was inclosed by a lawful fence or not.

[A substitute for the original section, adding the provision as to counties where stock is restrained from running at large; 15th G. A., ch. 70, § 3.]

In this state cattle are free commoners, and may lawfully be permitted to run at large, and the rule of the common law that every man is bound to keep his cattle within his own enclosure or be responsible in damage for injuries arising from their being abroad, is not applicable to the condition and circumstances of the people, and is not in force: *Wagner v. Bissell*, 3-396; *Heath v. Coltenback*, 5-490; *Alger v. M. & M. R. Co.*, 10-268; *Russell v. Hanley*, 20-219; *Smith v. C. R. I. & P. R. Co.*, 34-506. Therefore, the owner of land can only maintain an action for trespass by cattle, by showing that his fence was such as is required by statute: *Frazier v. Nortinus*, 34-82. But if cattle, after breaking over a sufficient fence into one field, go thence into another of the same owner, through a fence which is not sufficient, the action for their trespass upon the second field will lie: *Heldorf v. Meyers*, 20-378.

The owner of the land may have his remedy by action against the owner of the stock as here provided,

Adjoining owner: neglect of.
R. § 1549.
C. § 51, § 914.

SEC. 1449. And if the animals are not lawfully upon the adjoining close and came thereupon, or if they escaped therefrom into the injured enclosure in consequence of the neglect of the adjoining owner to maintain any partition fence, or any part thereof, which it was his duty to maintain, then the owner of the adjoining land shall be liable as well as the owner of the animals.

or by distraining the animals as provided in §§ 1453 et seq. If he pursue the former course the ordinary rules as to proof, etc., apply, and he need not have the damages ascertained by the township trustees, as provided in § 1454: *Quinton v. Van Tuyl*, 30-554.

A land owner in a county where stock is prohibited from running at large is not relieved of his obligation to maintain partition fences, and if stock rightfully in an adjoining enclosure escape upon his land by reason of his failure to maintain such fence, he cannot recover damages from the owner of the stock: *Duffees v. Judd*, 48-256.

The servant of a land owner, who distrains stock as agent of such owner, may justify as such agent, in an action of replevin brought against him to recover the stock: *Bearinger v. O'Hare*, 26-259.

There is no obligation upon a land owner, as against the public, to fence his field: See note to § 1507.

As to damage from bull unlawfully at large, see note to § 1452.

SEC. 1450. Section three hundred and nine of the code is hereby amended by striking out the word "now" in the fifth line thereof; and the word "stock," as used therein and in this chapter, is hereby declared to mean cattle, horses, mules, and asses; and under said section, the board of supervisors of each county may—and on petition of one-fourth of the legal voters thereof, as shown by the returns of the last general election, must—submit, in the manner provided by section three hundred and ten of the code, except as herein modified, to the electors of the county at the next general election, or, if they deem it advisable, at a special election called for that purpose, the following questions of police regulation, or either of them, and no others, to-wit:

- First. Shall stock be restrained from running at large? Questions
Second. Shall stock be restrained from running at large between sunset and sunrise? that may be submitted.

Third. Shall stock be restrained from running at large from the first day of (naming the month) in each year, until the first day of (naming the month) following?

Fourth. Shall stock be restrained from running at large between sunset and sunrise from the first day of (naming the month) in each year, until the first day of (naming the month) following?

[A substitute for the original section; 15th G. A., ch. 70, § 4.]

The provisions of Code of '51 and 6th G. A., ch. 193 (Rev. §§ 250-257), authorizing a submission of the question whether swine and sheep should be allowed to run at large, to vote in each county, were held to be merely an exercise of the police power, and therefore not unconstitutional as not having a uniform operation, nor as depending for their validity upon a vote of the people. (Const., art. 1, § 6, and art. 3, § 1): *Dalby v. Wolf*, 14-228.

A section similar to this in 12th G. A., ch. 144, making the question

whether that act should be in force in any county dependent upon a vote of the people of the county, was held unconstitutional and the act was held to be in force in all the counties of the state without such adoption: *Weir v. Cram*, 37-649; and the same ruling was made as to 13 G. A., ch. 26; *Little v. McGuire*, 38-569; *Hallock v. Hughes*, 42-516. As to the constitutionality of these provisions, see remarks of code commissioners in proposing § 1457: *Code Com'rs' Rep.*

SEC. 1451. If at such election a majority of the electors voting thereon, shall vote in favor of either of such regulations, then the same shall take effect and be in force at the end of thirty days after said election, and shall continue in force until the end of ninety days after an election at which, on a resubmission of the same question, a majority of the electors of the county voting thereon shall vote against the same: *provided*, that where any county prior to the taking effect of this act, shall have voted, on the submission of such question, "for restraining stock from running at large," or "for restraining stock from running at large between the hours of sunset and sunrise," as provided in chapter 3, title 11, of the code, or in the law or laws to which the same is amendatory, such vote is hereby declared to be legal and valid, and to amount to an adoption by the county of the police regulation so voted for, as the same is herein set out as fully and effectually as if the same was submitted and voted for under this act, except that the same shall be and remain in force in such county until the end of thirty days after

Code, § 309,
amended.

Meaning of
"stock."

Board of su-
pervisors to
submit ques-
tion to popu-
lar vote.
§ 310.

Questions
that may be
submitted.

Proviso: reg-
ulation
declared in
force in coun-
ties adopting
provisions of
herd law.

the next general election and no longer unless re-adopted thereat.

[A substitute for the original section ; 15th G. A., ch. 70, § 5.]

Owner of stock liable for damage where police regulation is adopted.

How recovered.

Pro rata assessment of damages as against different owners.

Proviso : when animals shall not be considered running at large.

Penalty for relieving stock from restraint.

Who to be considered owner.

Township trustees notified to assess damages : sale of stock.
13 G. A. ch. 26,
§ 1.
12 G. A. ch. 144.

SEC. 1452. The owner of any stock or domestic animal, prohibited by law or police regulation of any country from running at large at any of the times hereinbefore mentioned, shall be liable for all damages done thereby while wrongfully remaining at large upon the public highway, or upon the improved or cultivated lands of another, which may be recovered by action at law, or the party injured may, at his option, distrain the trespassing animals, and retain the same in some safe place, at the expense of the owner, until the damages are paid as provided in section [s] fourteen hundred and fifty-four, fourteen hundred and fifty-five, and fourteen hundred and fifty-six of the code ; said damages to be assessed pro rata per head, and each owner, if more than one owner, be liable for the pro rata amount, and each owner shall have the right to discharge his stock from distraint by paying the said pro rata amount to the person damaged, together with his pro rata share of the cost of distraint ; *provided*, that no stock or domestic animal, except the male animals mentioned in section fourteen hundred and forty-seven of the code, shall be considered as running at large, so long as the same is upon unimproved or uncultivated lands, and under the immediate care and control of the owner, or upon the public highway under like care and control, for the purpose of travel or driving thereon.

[A substitute for the original section ; 15th G. A., ch. 70, § 6, as amended by 18th G. A., ch. 188, § 1 ; which latter act also contains the following :]

SEC. 2. If any person by force or otherwise without leave of the person having stock under distraint, relieve the stock from distraint he shall be guilty of a misdemeanor and shall pay a fine of not less than ten dollars nor more than one hundred dollars, or by imprisonment in the county jail not less than ten days nor more than thirty days.

Held, that the original section as contained in 13th G. A., ch. 26, was applicable without a submission to vote of the question of restraining stock from running at large, and that it was immaterial whether the premises were enclosed with a lawful fence or not: *Little v. McGuire*, 38-560; *Hallack v. Hughes* 42-516; and see notes to § 1450. But see also notes to § 1448.

The owner of a thoroughbred cow, which is got with calf by an ill-bred and unpreserved bull, unlawfully running at large, may recover damages from the owner of such bull, which are to be measured by the difference in the value of the cow, for the purpose of breeding of fine stock, before meeting such bull and afterwards: *Crawford v. Williams*, 48-247.

SEC. 1453. The word owner, as used in the preceding and in the three succeeding sections of this chapter of the code, shall include the person entitled to the present possession of the animal, and also the person having the care or charge of the same, as well as the person having the legal title thereto.

[A substitute for the original section ; 15th G. A., ch. 70, § 7.]

SEC. 1454. Within twenty-four hours after the stock has been distrained, Sunday not being included, the party so injured, or his agent, shall notify the owner of said stock, when known, and if said owner shall fail to satisfy the owner of, or occupant cultiva-

ting said land, he shall, within twenty-four hours thereafter notify the township trustees to be and appear upon the premises to view and assess the damages; such notices to be either verbal or in writing. When two or more trustees have assembled, they shall proceed to view and assess the damages and the amount to be paid for keeping said stock; and if the person or persons owning such distrained stock refuse to pay such damages so assessed, then the trustees shall post up notices in three conspicuous places in the township where such damages were done, that the said stock, or so much thereof as is necessary to pay said damages with costs of sale, will be sold to the highest bidder; any money or stock left after satisfying such claims shall be returned to the owner of the stock so disposed of; said sale shall take place at the enclosure where such stock was distrained between the hours of one and three P. M. on the tenth day after the posting of said notice; *provided*, that if any one or more of said trustees are interested in said damages, the trustee or trustees not so interested shall appoint some one or more, as the case may require, to act in the place of the person or persons so interested; the owner of the stock, or the person entitled to the possession thereof, when known, shall also be notified of the time and place of the meeting of said trustees to assess said damages. When either trustee is absent so that notice cannot be served upon him, then any justice of the peace shall appoint a suitable person, having the qualifications of a juror, to supply the place of the absent trustee, and the person so appointed shall serve as such trustee for all the purposes of this and the following sections.

Sec. 1455. The trustees shall make their assessment in writing and file the same with the township clerk, to be of record in his office. Any person aggrieved by the action of the trustees under this chapter, may appeal to the circuit court of the proper county. The bond shall be filed with the clerk of the township in a penalty double the value of the property distrained, or if the value of the property exceed the amount of the damage claimed, then double the amount of the damage. Notice of such appeal shall be given in the same time and manner as in appeals from a judgment of a justice of the peace, with good and sufficient securities, to be approved by the clerk; and from and after the filing of the appeal bond, the same shall operate as a supersedeas. In case the owner of such stock be appellant the same shall be delivered to him. The clerk, after the appeal is taken, shall certify all the original papers to the clerk of the circuit court within the time prescribed for the appeal.

[The word "stock" between "such" and "be" in the thirteenth line, as it occurs in the original, is omitted in the printed code.]

Upon appeal to the circuit court, were in fact trespassers, and the sufficiency of the fences may be reviewed: not only the amount of damages, but also the question whether the stock

Duffee v. Judd, 48-256.

Sec. 1456. If the owners of such distrained stock are not known, it shall be treated as estrays.

[Secs. 1457 to 1463, repealed by 15th G. A., ch. 70, § 1.]

Sec. 1464. No person shall take up any unbroken animal as a stray, between the first day of May and the first day of November,

Absent trustees.

Assessment filed with clerk: appeal from.
Same, § 6.
12 G. A. ch. 144.

Estrays.
Same, § 7.
12 G. A. ch. 144.

Unbroken ani- unless the same be found within his lawful enclosure, nor shall any
mals.
9 G. A. ch. 102, person take up any stray unless he be a householder.

^{#1.} [The word "any" in the first line, as in the original, is "an" in the printed code.]

A distinction is here contemplated | up if found running in the highway:
between a *broken* and an *unbroken* | *Knudson v. Gieson*, 38-234.
animal. The former may be taken |

Who may take up strays. SEC. 1465. If any horse, mule, neat cattle, or other animal, liable to be taken up as a stray, come upon any person's premises, any other person may notify him of the fact, and if he fail to take up such stray for more than five days after such notice, any other person being a householder in the same township, may take up such stray and proceed with it as if taken upon his own premises; *provided*, that he shall produce to the justice of the peace proof of the service of such notice, and all persons taking up stray animals shall state to the justice, under oath, where such stray was taken up.

An estray is an animal whose owner is unknown, and therefore a person cannot take up an animal as an estray when the owner of such animal | is known to him. In such case the owner may replevin without tendering costs: *Walters v. Glats*, 29-437.

Notices containing description of animal posted up. SEC. 1466. Any person taking up a stray, shall, within five days thereafter, post up written notices in three of the most public places in the township, containing a full description of said animal, and, unless such stray shall have been previously reclaimed by the owner, he shall, within ten days, go before a justice of the peace in the township in which such stray was taken up, or, in case there is no justice in the township, he shall go before the nearest justice in the county, and make oath as to where said stray was taken up, and that the marks or brands have not been altered to his knowledge, either before or after the same was taken up.

Appraisers: oath: duty of justice. SEC. 1467. If necessary, the justice shall issue a notice to three disinterested householders in the township, to appear at the time and place mentioned in said notice to appraise the stray. The persons so notified, or any two of them attending, shall take an oath that they will fairly and impartially appraise said stray, and their appraisement, embracing a description of the size, age, color, sex, marks, and brands of the stray, shall be entered by the justice in a book to be kept by him for that purpose.

Justice to send copy of to county auditor: his duty. SEC. 1468. The justice shall, within ten days thereafter, send a certified copy of said entry to the county auditor, who shall immediately enter the same in an estray book, to be kept by him for that purpose. If the appraised value of the stray is ten dollars, or more, the auditor shall cause a copy of said entry to be posted on the court house door, and a copy of said notice to be inserted three times in some newspaper in the county, if there be one, if not, he shall cause to be posted up written notices in three public places in the county, and he shall, within ten days after receiving the notice of appraisement, unless the animal shall have been previously reclaimed by the owner, forward a certified copy of the same to the public printer hereafter provided; together with the amount required to pay for two insertions of said notice in the paper published by such printer.

SEC. 1469. The secretary of state shall select and contract with a printer to print all such advertisements of strays, and shall immediately notify the auditor of each county of the name and residence of such printer, and the price of such advertisements. In making the contract the secretary shall select an agricultural paper, published at the capital, if there be one. Such contract shall be renewed on the first day of January, annually; and if a vacancy should from any cause occur, the secretary shall immediately fill it with a new contract.

Secretary of
state to con-
tract for pub-
lishing notices:
auditor noti-
fied.
Same, §§ 7, 10,
11.

SEC. 1470. The printer thus selected, shall, once in each week, issue a newspaper or printed sheet, in which he shall give two successive insertions of all estray notices sent to him, and shall send one copy of each paper issued to the auditor of each county, who shall receive, file, and preserve the same, to be examined by any person who may desire to see them. The auditor is hereby required to subscribe for one copy of the paper selected by the secretary of state for the publication of estray notices, and the amount of the subscription price shall be allowed and paid out of the treasury of the county.

Publication of
notice: county
auditor to sub-
scribe for
paper.
Same, §§ 8, 9.

SEC. 1471. Where the appraised value of any stray does not exceed five dollars, no further proceedings need be had than for the justice to enter a description of said stray on his estray book, and if no owner appear within six months, the right of the property shall vest in the finder, if he has complied with the law and paid all costs.

When value is
less than five
dollars.
Same, § 12.

[The word "where" in the first line, as in the original, is "when" in the printed code.]

SEC. 1472. Where the appraised value of the stray exceeds five dollars and is less than ten, and the finder shall have complied with the provisions of this chapter, and paid all costs, the property shall vest in him after the expiration of nine months, if no owner appear.

When title to
property vests.
Same, § 13.

SEC. 1473. Any person legally taking up a stray may use or take up may work, if he does so with care and moderation, and does not abuse or injure it. But if any person unlawfully take up any stray, or take up any stray and fail to comply with the provisions of this chapter, or use or work it in a manner contrary to this chapter, or work it before having it appraised, or keep such stray out of the county for more than five days at any one time, before he acquires a title to said stray, such offender shall forfeit to the county twenty dollars, to be sued for by any person in the county; and the owner of the stray may also recover of such offender double the amount of all injury sustained, with costs.

use and work
animal.
Same, § 16.

Penalty for fail-
ure to comply
with law.

SEC. 1474. The owner of any stray may, within one year from the time of taking up, prove his ownership of the same before a justice of the peace, (and if the title shall not have already vested in the finder by sections fourteen hundred and seventy-one or fourteen hundred and seventy-two of this chapter,) and upon payment of all costs, the reward, and a reasonable allowance, he shall be entitled to recover the stray. If the owner and finder cannot agree upon the amount of such allowance, it shall be settled by some justice of the peace, who shall take into consideration the trouble and expense incurred by the finder, and whatever use he may have had of the stray.

Owner may
prove property:
proceedings.
Same, § 17.

Title to vest in
finder: excep-
tions.
Same, § 18.

SEC. 1475. If the owner fail to claim and prove his title to any stray for one year after the time of taking up, and the finder shall have complied with this law, a complete title to the stray shall vest in the finder; but if the owner shall appear within eighteen months from the time of taking up, and prove his ownership of such stray, and pay all costs and expenses as above provided, the finder shall pay him the appraised value of such stray, or may, at his option, deliver up the stray.

Finder not lia-
ble for acci-
dents.
Same, § 19.

SEC. 1476. If any stray legally taken up, escape from the finder, or die, without any fault on his part, he shall not be liable for the loss.

Penalty.
Same, § 20.

SEC. 1477. If any person shall sell, or trade, or take out of the state, any stray before the legal title shall have vested in him, he shall forfeit to the owner double the value of said stray, and shall be punished by fine not exceeding ninety dollars, or imprisonment in the county jail not exceeding thirty days.

Same.
Same, § 21.

SEC. 1478. If any printer, auditor, or justice of the peace, fail to perform the duties enjoined upon him by this chapter in relation to strays, he shall forfeit to the county not less than five or more than fifty dollars, to be sued for by any person in the county.

Marks and
brands: book
for.
R. § 1555.
C. 51, § 920.

SEC. 1479. The board of supervisors of each county shall procure at the expense of the county, a book for each civil township, in which to record the marks and brands of horses, sheep, hogs, and other animals.

Recorded.
R. § 1556.
C. 51, § 921.

SEC. 1480. Any person wishing to mark or brand his domestic animals with any distinguishing mark, may adopt his own mark and have a description thereof recorded by the clerk of the township in which the owner lives.

Mark of an-
other.
R. § 1557.
C. 51 § 922.

SEC. 1481. No person shall adopt a mark or brand previously recorded to another person residing in the same township, nor shall the clerk record the same one to two persons, unless on their joint application.

Abandoned
animals taken
care of at
owner's ex-
pense.
13 G. A. ch. 176,
§ 4.

SEC. 1482. Any person may take charge of any animal whose owner has abandoned it or fails to properly take care and provide for it, and may furnish the same with proper shelter, nourishment, and care, at the owner's expense, and shall have a lien on such animal for the same; which lien, at the expiration of three months, shall become a perfect title to the property as provided in the case of a stray.

Cruelty to ani-
mals: food and
water to be sup-
plied.
Same, § 9.

SEC. 1483. In case any creature impounded or otherwise confined, shall be without necessary food or water for more than twelve successive hours, it shall be lawful for any person, as often as necessary, to enter the pound, enclosure, or building, and supply it with necessary food and water so long as it shall remain so confined; and the reasonable cost of such food and water may be collected by him of the owner of such creature.

Diseased ani-
mals killed.
Same, § 10.

SEC. 1484. The sheriff, constable, police officer, officer of any society for the prevention of cruelty to animals, or any magistrate, shall destroy any horse or other animal having the disease called and known as the glanders, or any disabled creature unfit for further use.

See § 4057.

Sec. 1485. It shall be lawful for any person to kill any dog caught in the act of worrying, maiming, or killing any sheep or

lambs, or other domestic animal, or any dog attacking or attempting to bite any person, and the owner shall be liable to the party injured, for all damages done by his dog, except when the party is doing an unlawful act. Dogs may be killed.
Ex. S. 9 G. A. ch. 20, § 3.
9 G. A. ch. 76, § 9.

To justify the killing of a dog under this section he must be not only trespassing but actually engaged in

one of the acts mentioned: *Marshall v. Blackshire*, 44-475.

SEC. 1486. Any animal, or other property, taken up, held, dis-trained, or seized under this chapter, may be released at once by the owner, upon execution and filing of a bond in double the value of the property held, conditioned for the payment of all costs and damages for which the same is held, and to which the one taking up, holding, or distraining, may be legally entitled, within twenty days from the filing and approval of such bond; said bond shall be filed with and approved by any constable, sheriff, or other officer having custody of the property, or by the nearest acting justice of the peace, or by the justice before whom any legal proceedings relating to said property is pending. Said bond shall be for the use of any person having any right or interest in or to said property so released.

Animals seized
released on
execution of
bond.

[The word "with" after "filed" in the eighth line, as in the original, is omitted in the printed code.]

SEC. 1487. A bounty of one dollar shall be allowed on each scalp of a wolf, lynx, swift, or wild-cat, to be paid out of the treasury of the county in which the animal was taken, upon a verified statement of the facts showing the claimant to be entitled thereto.

Bounty ; paid
from county
treasury.

R. §§ 2193, 2195

SEC. 1488. The person claiming the bounty must produce such statement, together with the scalp or scalps, with the ears thereon, to the county auditor, or a justice of the peace of the county wherein such wolf, lynx, swift, or wild-cat, may have been taken and killed; and the officer before whom such scalps are produced shall deface or destroy the scalps when so produced, so as to prevent the use of the same to obtain for the second time the bounty herein provided for.

Proceedings to
obtain.
R. § 2194.

CARE AND PROPAGATION OF FISH.

[Fifteenth General Assembly, Chapter 50, so far as not superseded by the following acts, is inserted on page 1023, in place of sec's 4052, 4053.]

[Sixteenth General Assembly, Chapter 70.]

* * * * *

SEC. 4. Persons raising or propagating fish on their own premises, or owning premises on which there are waters having no natural outlet, supplied with fish, shall absolutely own said fish, and any person taking fish therefrom, or attempting to take fish therefrom, without the consent of the owner, or his agent, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than twenty-five dollars, nor less than five dollars or imprisoned in the country jail not more than thirty days, and shall be liable to the owners of the fish in damages in double the amount of damages sustained, the same to be recovered in a civil action before any court having jurisdiction over the same.

Fish in waters
on property
belonging to
private par-
ties.

When it shall be unlawful to kill certain fish.

Fine for violation of section six.

Proviso.

One fish commissioner appointed by governor.

Vacancy.

Duties.

Salary.

Report of commissioner.

SEC. 6. It shall be unlawful to catch and kill any bass or wall-eyed pike between the first day of April and the first day of June, or any salmon or trout between the first day of November and the first day of February, of any year, in any manner whatever.

SEC. 7. Any person found guilty of a violation of section six of this act, shall, on conviction before a justice of the peace, be fined not less than five dollars nor more than twenty-five dollars for each offense, and shall stand committed until such fine be paid.

SEC. 10. *Provided*, that nothing herein contained shall be held to apply to fishing in the Mississippi and Missouri rivers, nor in so much of the Des Moines river as forms the boundary between the states of Iowa and Missouri.

[The last preceding section is as amended by 18th G. A., ch. 92, adding the proviso as to the Des Moines river. The other sections of this chapter are omitted as temporary or superseded by later enactments.]

[Seventeenth General Assembly, Chapter 80, being "an act to promote fish culture * * * and to amend and consolidate the enactments heretofore passed for that purpose, amending chapter 70, acts of the Sixteenth General Assembly."]

SEC. 1. The governor of the state is hereby authorized and required to appoint, after the expiration of the term of the present incumbent, and biennially thereafter, one competent person, who shall be known as the state fish commissioner, who shall hold his position for the term of two years; and any vacancy that may occur, for the unexpired term, or by reason of the expiration of the term of said office, shall be filled by the appointment and commission of the governor.

The general duties of said commissioner, including the present incumbent, shall be to have general charge and superintendence of the state hatching house, now located at Anamosa, to forward the restoration of fish to the rivers and waters of the state, and to stock the same with fish from said hatching house, and elsewhere, to the extent that means therefor may be furnished by the state, and to the extent that means for that purpose may be furnished by the United States fish commissioner, and by societies and individuals interested in the propagation of fish in the waters of this state.

SEC. 2. The fish commissioner, including the present incumbent, shall receive, in full compensation for his services, twelve hundred dollars per year, to be paid out of any money in the state treasury not otherwise appropriated.

[Sec. 3, makes a temporary appropriation.]

SEC. 4. It shall be the duty of said fish commissioner to make a detailed, itemized and sworn statement, on or before two years after the 15th day of November, 1877, and every two years thereafter, showing the amount of money expended, for what purpose or purposes expended, the number and kinds of fish distributed, together with such general information on the subject of fish culture as such commissioner may think proper; and upon the submission of such report, and each subsequent, the same shall be caused to be printed and distributed, to the same extent and in the same manner as now provided by law for the

printing and distribution of the reports of public officers of the state.

SEC. 5. No person shall place, erect, or cause to be placed or erected, across any of the rivers, creeks, ponds or lakes of this state, any trot line, dam, seine, weir, fish dam, or other obstruction, in such manner as to prevent the free passage of fish up, down or through such water-courses, unless the same be done by the instruction or under the direction of the fish commissioner, and that when the same is so done by or through the instruction, or under the direction of the fish commissioner, it shall be unlawful for any person or persons to remove, or in any way interfere with the same. This section shall not be construed to prohibit the erection of dams for manufacturing purposes as provided by law.

SEC. 6. Any person found guilty of a violation of the provisions of section five of this act, shall, upon conviction before a justice of the peace, be fined not less than twenty-five, nor more than one hundred dollars, or imprisoned in the county jail not less than ten days, nor more than thirty days, in the discretion of the court.

For similar provisions, see 15 G. A. | 4052, 405¹, on page 1023.
cn. 50, §§ 6, 7, inserted in place of §§

SEC. 7. All acts or parts of acts in conflict herewith are hereby repealed.

[Eighteenth General Assembly, Chapter 156.]

SEC. 1. The governor of the state is hereby authorized and required to appoint an assistant fish commissioner, who shall act under the direction and supervision of the present fish commissioner, who during his term of office, shall make his residence in Dickenson county. The duties of said fish commissioner shall be to establish and maintain an establishment for hatching fish at some suitable place in said Dickenson county, and to distribute the various products of said establishment in the waters of Iowa generally, and under the direction of the present fish commission. It shall be his duty to attend to the enforcement of the protective fish laws, and supervise the fish interests of that section of the state. Said assistant fish commissioner shall hold his office for the term of two years and until his successor is elected and qualified, and shall receive as full compensation for his services, the sum of six hundred dollars per year, which salary shall be paid out of the state treasury out of any moneys not otherwise appropriated; and said salary shall be paid only upon the order of the executive council, after it is made to appear to said council that the work of hatching and rearing fish is being successfully carried on at said establishment, and the work of hatching and rearing fish at said establishment shall be without further expense to the state other than the salary of said assistant fish commissioner.

CONSTRUCTION OF FISH-WAYS.

[Seventeenth General Assembly, Chapter 188.]

SEC. 1. The owner or owners of any dam or obstruction across any river or stream, creek, pond, lake, or water-course, in this state, shall, within a reasonable time, erect, construct and maintain, over or across said dam or obstruction, a suitable fish-way of suitable capacity and facility to afford a free passage for fish up

Obstructions to
free passage
of fish prohibited.

Penalty for
violating the
provisions of
this act.

Assistant fish
commissioner.

Term of office:
compensation.

Shall be con-
structed
within rea-
sonable time.

and down through such water-course when the water of said stream is running over the said dam.

SEC. 2. Any dam or obstruction mentioned in section one of this act, not provided with such fish-way within a reasonable time after the taking effect of this act, is hereby declared a nuisance, and may be abated accordingly.

Dam or obstruction a nuisance.

Penalty for violation of this act.

SEC. 3. Any person guilty of the violation of the provisions of this act, shall, upon conviction before a justice of the peace, be fined not less than five nor more than fifty dollars for the first offense, and not less than twenty dollars for each subsequent offense, and shall stand committed until such fine is paid.

[Eighteenth General Assembly, Chapter 123.]

Clerk of board of supervisors to report as to construction of dams, &c.

SEC. 1. Within thirty days after the passage and publication of this act, each clerk of the board of supervisors in any county in this state, in which there is any dam constructed across any stream therein, shall notify the state fish commissioner of the height of each dam in this county, the width of the stream where the dam is constructed, the character of the foundation upon which each dam rests, and shall give to him all other information necessary to convey to said commissioner an intelligent understanding of the situation and location of each dam in said county.

Model for construction of fish ways.

SEC. 2. Within thirty days after the receipt of said notice, the said state commissioner shall acknowledge the same by mail, and within thirty days from that date the said commissioner shall send, through the United States mail, or by express, to the clerk of the said board of supervisors, plans and specifications, also one model for each county, to be retained by the auditor for reference, also one model suitable for the construction of a fish-way for each dam reported as aforesaid, and the expenses connected therewith to be paid by the county receiving the same; and the said clerk shall immediately, on the receipt of said plans and specifications, cause a notice to be served in the same manner as required for the service of original notices, and returned to the auditor for preservation, which notice shall be directed to the owner, agent, or party in charge of the dam, and which shall inform said owner, agent, or party that model, plans, and specifications are in his office, subject to his inspection, for the construction of a fish-way to said dam; and that, unless he consult the same and comply therewith within sixty days the county will proceed to construct the same, and the costs and penalties therefor will be made a tax or lien on the entire premises on which such dam is situated.

Notice to owner of dam to construct way.

SEC. 3. If, within sixty days after the service of said notice, the owner, agent or party in charge shall fail to construct and attach a fish-way to such dam, as required by the commissioners, then the county board of supervisors shall immediately proceed to construct and attach the same; and when so constructed and attached, the original cost and twenty per cent. thereon, as a penalty, shall be entered upon the tax books of the county, and shall be a lien on said property, to be collected in the same manner as provided by law for the collection of other taxes.

Board of supervisors may construct fish way upon failure of owner to do so.

Costs and penalty to be entered on tax books and become a lien.

SEC. 4. To carry out any of the provisions of this act the county board of supervisors may issue county warrants for the payment of such expenditures and expenses, and when the said

taxes are paid, the said warrants and all accrued interest thereon shall be refunded to the county, and the balance, after paying the clerk and state commissioner and board of supervisors for their services, and for the service of said notice, shall be paid over to the county treasurer to become a part of the school fund of the county.

SEC. 5. Some one of the county board of supervisors in the first week in April and September of each year, shall visit each dam in his county to which fish-ways are attached and require the party in charge to keep the same in good repair, and if he fails or for any reason shall neglect to repair the same within ten days after notice so to do, the said supervisors shall immediately cause the needed repairs to be made at the expense of the county, and the costs thereof, with a penalty of twenty-five per cent. added, shall become a lien on the premises and shall be collected as other taxes are collected against the property.

SEC. 6. The said clerk and state fish commissioner and board of supervisors, shall keep an accurate and itemized account of their expenditures, and report the same under oath to the county board of supervisors, at any regular meeting, and the said board shall thereupon allow such reasonable compensation for their services as they may consider reasonable and just, to be paid out of any money in the county treasury not otherwise appropriated.

SEC. 7. Any person who shall kill, trap, ensnare, detain or in any manner molest the free and unmolested passage of any fish within one hundred yards of any dam or in their transit through any fish-way attached or belonging thereto, shall be adjudged guilty of a misdemeanor and upon conviction thereof shall pay a fine for each offense of not less than five nor more than fifty dollars and five dollars to the complaining witness, together with costs of prosecution, including an attorney's fee not exceeding ten dollars, and stand committed until the same are fully paid, and when said fine shall be collected, the same shall be paid over to the county treasurer to become part of school fund.

SEC. 8. If any member of any board of supervisors shall, by vote or act, neglect or refuse to enforce the provisions of this act, he shall be adjudged guilty of a misdemeanor, and upon the complaint of any person before any justice of the peace having jurisdiction thereof, if he be convicted, he shall pay a fine of not less than twenty nor more than one hundred dollars and costs for each offense, and when collected the same shall be paid over to the county treasurer and become part of the school fund of the county.

SEC. 9. Nothing in this act shall be construed to repeal any part of chapters eighty and one hundred and eighty-eight of the acts of the seventeenth general assembly of the state of Iowa.

CHAPTER 4.

OF FENCES.

SECTION 1489. The respective owners of lands enclosed with fences, shall keep up and maintain partition fences, between their own and the next adjoining enclosure so long as they improve them in equal shares, unless otherwise agreed between them.

Partition main-
tained.
R. § 1526.
C. 51, § 895.

Applied: *Schnare v. Gehman*, 9-283.

Neglect to
build or repair.
R. § 1527.
C. 51, § 896.

SEC. 1490. If any party neglect to repair or rebuild a partition fence, or a portion thereof, which he ought to maintain, the aggrieved party may complain to the fence viewers, who, after due notice to each party, shall examine the same, and if they determine the fence is insufficient, shall signify it in writing to the delinquent occupant of the land, and direct him to repair or rebuild the same within such time as they judge reasonable.

The duty of maintaining partition fences as provided in this chapter, being one created solely by statute, the method prescribed by the statute for enforcing such duty must be followed. A party cannot proceed by action in court instead of by application to the fence viewers: *Lease v. Vance*, 28-509.

It is not necessary that the complaint to the fence viewers be in writing and made matter of record: *Tubbs v. Ogden*, 46-134.

Unless due notice is given to the adverse party of the meeting of the fence viewers to examine the fence, the subsequent proceedings cannot constitute the basis of a recovery against him: *Lokchart v. Wessels*, 46-81. As to what is due and sufficient notice, see *Tubbs v. Ogden*, 46-134.

Penalty, if or-
der of fence
viewers is not
complied with.
R. § 1528.
C. 51, § 897.

SEC. 1491. If such fence be not repaired or rebuilt accordingly, the complainant may repair or rebuild it, and the same being adjudged sufficient by the fence viewers, and the value thereof, with their fees, being ascertained by them and certified under their hands, the complainant may demand of the owner of the land where the fence was deficient the sum so ascertained, and, in case of neglect to pay the same for one month after demand, may recover it with one per cent. a month interest by action.

The action of the fence viewers is conclusive where they have jurisdiction; but they cannot conclude a party by determining that to be a partition fence, which, in fact, is not: *Bills v. Belknap*, 38-225.

The adjudication by the trustees as to the sufficiency of the fence should be by them sitting as a board, and as a result of personal inspection, but the inspection need not be made by them in a body. A record of the adjudication should be made by the clerk, but it is not necessary that such adjudication be reduced to writing and certified by them. The certificate of the viewers as to the value of the fence should be filed with the clerk and will then be sufficient evidence of complainant's rights and notice to the adverse party: *Tubbs v. Ogden*, 46-134.

Disputes:
fence viewers
to settle.
R. § 1529.
C. 51, § 898.

SEC. 1492. When a controversy arises between the respective owners about the obligation to erect or maintain partition fences, either party may apply to the fence viewers, who, after due notice to each party, may inquire into the matter and assign to each his share thereof, and direct the time within which each shall erect or repair his share in the manner provided above.

Neither the notice here provided nor the finding, assigning to each his share, &c., need be in writing, though it would be the better practice to put

them in that form: *Talbot v. Blacklege*, 22-572; *Gantz v. Clark*, 31-254. And as to necessity of notice see note to § 1490.

The decision of the fence viewers is not conclusive as to the true division line, and in an action by one land-owner against an adjoining

owner to recover the proportion of the cost of building a partition fence, in accordance with the direction of the fence viewers, the defendant may show, as a defense, that the fence was not erected upon the true line: *Peschong v. Mueller*, 50-237; and see note to preceding section.

SEC. 1493. If a party neglect to erect or maintain the part of fence assigned him by the fence viewers, it may be erected and maintained by the aggrieved party in the manner before provided, and he shall be entitled to double the value thereof, to be recovered as directed above.

SEC. 1494. All partition fences shall be kept in good repair throughout the year, unless the owners on both sides otherwise agree.

SEC. 1495. No person not wishing his land enclosed and not occupying nor using it otherwise than in common, shall be compelled to contribute to erect or maintain any fence between him and an adjacent owner; but when he encloses or uses his land otherwise than in common, he shall contribute to the partition fences as in this chapter provided.

SEC. 1496. When lands owned in severalty have been enclosed in common without a partition fence, and one of the owners is desirous to occupy his in severalty, and the other refuses or neglects to divide the line where the fence should be built or build a sufficient fence on his part of the line when divided, the party desiring it may have the same divided and assigned by the fence viewers, who may, in writing, assign a reasonable time, having regard for the season of the year for making the fence, and if either party neglect to comply with the decision of the viewers, the other, after making his own part, may make the other part and recover as directed above.

SEC. 1497. In the case mentioned in the preceding section, when one of the owners desires to throw open any portion of his field not less than twenty feet in width, and leave it unenclosed to be used in common by the public, he shall first give the other party six months notice thereof.

When a person encloses lands adjoining the enclosure of another, and before any division of the fence separating them has been made, desires

to throw open his field as provided in this section, it would seem he might do so at pleasure and without notice: *Miner v. Bennett*, 45-635.

SEC. 1498. When land which has lain unenclosed is enclosed, the owner thereof shall pay for one-half of each partition fence between his lands and the adjoining lands, the value to be ascertained by the fence viewers, and if he neglect for thirty days after notice and demand to pay the same, the other party may recover as before provided; or he may, at his election, rebuild and make half of the fence, and if he neglect so to do for two months after making such election, he shall be liable as above provided.

SEC. 1499. When a division of fence between the owners of improved lands may have been made, either by fence viewers, or by agreement in writing, recorded in the office of the clerk of the township where the lands are, the owners and their heirs and

Failure to comply.
R. 2 1530.
C. 51, § 899.

to maintain.
R. 2 1532.
C. 51, § 901.

common: proceedings where division is sought.
R. 2 1533.
C. 51, § 902.

When it is desired not to enclose.
R. 2 1534.
C. 51, § 903.

When owner encloses he must pay for partition fence.
R. 2 1535.
C. 51, § 904.

Division of fence recorded
R. 2 1536.
C. 51, § 905.

assigns shall be bound thereby, and shall support them accordingly, but if any desire to lay his lands in common, and not improve them adjoining the fence divided as above, the proceedings shall be as directed in the case where lands owned in severalty have been enclosed in common without a partition fence.

An assignment made by the fence viewers under § 1492 is binding upon the parties thereto without being recorded: *Gantz v. Clark*, 31-254.

The agreement here referred to is one between the owners as to the amount of fence each shall maintain; and held, that an agreement that there should be a lane and no partition fences need not be in writing: *Bills v. Belknap*, 38-225.

See note to § 1497.

Definition of "owner" and "fence viewers."
R. § 1537.
C. '51, § 906.

SEC. 1500. In the provisions of this chapter, the term "owner" shall apply to the occupant or tenant when the owner does not reside in the county, but these proceedings will not bind the owner unless notified. The term "fence viewers" means the fence viewers of the townships, in which the division line in controversy is, and if that line is between two townships, and both parties live in the same, then it means the viewers of that township, but if the parties live in different townships, one viewer at least shall be taken from that of the party complained against.

Fence on another's land may be removed.
R. § 1538.
C. '51, § 907.

SEC. 1501. When a person has made a fence or other improvement on an enclosure, which, on afterward making division lines is found to be on land of another, and the same has occurred through mistake, such first person may enter upon the land of the other and remove his fence or other improvement and material within six months after such line has been run, upon his first paying, or offering to pay, the other party for any damage to the soil which may be occasioned thereby, and when the parties cannot agree as to the damages the fence viewers may determine them as in other cases.

Same
R. § 1539.
C. '51, § 908.

SEC. 1502. But such fence or other improvement, except substantial buildings, shall not be removed if they were made or taken from the land on which they lie, until the party pays the owner the value of the timber, to be ascertained by the fence viewers, nor shall a fence be removed at a time when the removal will throw open or expose the crop of the other party, but it shall be removed in a reasonable time after the crop is secured, although the above six months have passed.

Disputes: fence viewers to determine.
R. § 1540.
C. '51, § 909.

SEC. 1503. When any question arises between parties, other than those above stated, concerning their rights in fences, or their duties in relation to building or supporting or removing them, such question may be determined by the fence viewers upon the principles of this chapter.

Where the parties have agreed to maintain a certain kind of fence the trustees may determine whether such agreement has been performed and decide as to time and manner of performance: *Huber v. Wilkinson*, 46-458.

Lines: fence on.
R. § 1541.
C. '51, § 910.

SEC. 1504. A person building a fence, may lay the same upon the line between him and the adjacent owners, so that the fence may be partly on one side and partly on the other, and the owner shall have the same right to remove it as if it were wholly on his own land.

SEC. 1505. The foregoing provisions concerning partition fences shall apply to a fence standing wholly upon one side of the division line. Same.
R. § 1542.
C. § 911.

SEC. 1506. The foregoing provisions of this chapter do not bar any other legal proceedings for the determination of the title to land, or the dividing line between contending owners, nor do they preclude agreements by the parties. Other proceed-
ings.
R. § 1543.
C. § 912.

The agreements here referred to need not necessarily be in writing. It was not so intended by § 1499: The proceedings of the fence viewers do not bar other proceedings which involve division lines: *Pes-chongs v. Mueller*, 50-237.

SEC. 1507. A fence made of three rails of good substantial material, or three boards not less than six inches wide, and three-quarters of an inch thick, such rails or boards to be fastened in or to good substantial posts, not more than ten feet apart, where rails are used, and not more than eight feet apart where boards are used, wire either wholly or in part, substantially built and kept in good repair, or any other kind of fence, which, in the opinion of the fence viewers shall be equivalent thereto, shall be declared a lawful fence; *provided*, that the lowest or bottom rail, wire, or board shall not be more than twenty nor less than sixteen inches from the ground, and that such fence shall be fifty-four inches in height, except that a barbed wire fence may consist of three barbed wires, or of four wires, two of which shall be barbed; such fence in either case to have not less than thirty-six iron barbs of two points each, [or] twenty-six iron barbs of four points each on each wire to the rod, the wires to be firmly fastened to posts not more than two rods apart, with two stays between the posts, or with posts not more than one rod apart without such stays, the top wire to be not more than fifty-four nor less than forty-eight inches in height, and the bottom wire not more than twenty nor less than sixteen inches from the ground; *provided further*, that all partition fences may be made tight at the expense of the party desiring it, and such party may take from such fence the same material by him added thereto whenever he may elect; and, *provided further*, that when the owner or occupants of adjoining land use the same for the purpose of pasturing swine or sheep, each of said owners or occupants shall keep their respective share of the partition fence sufficiently tight to restrain such swine or sheep. Lawful fence
defined.
R. § 1545.

[As amended, by 18th G. A., ch. 47, repealing 16th G. A., ch. 101, and 17th G. A., ch. 124, as to barbed wire fences.]

A bluff, a hedge, a trench, a wall, a trestle, or the like, may be held to be in fact a lawful fence: *Hilliard v. C. & N. W. R. Co.*, 37-442.

The evidence of fence viewers is competent in regard to a matter upon which they are authorized to form an opinion: *Phillips v. Oystee*, 32-57.

Rev. § 1544 construed in regard to height there required: *Ibid.*

There is no obligation as to the

public resting upon the owners of growing crops to fence them; and in an action by the owner of an ox which had broken through an insufficient fence into a cornfield, and died from the effects of eating the corn, brought against the owner of the field for damages, *held*, that defendant was not liable: *H'rd v. Meyers*, 20-378.

As to obligation to fence generally, see notes to § 1448.

SEC. 1508. That all the provisions of this chapter in relation to partition fences, shall be alike applicable to counties or town- Where stock is restrained.
14 G. A. ch. 123.

ships having restrained, or which may restrain, stock from running at large.

Applied: *Duffees v. Judd*, 48-256.

DIVISION HEDGES.

[Sixteenth General Assembly, Chapter 106.]

Fence may be built five feet beyond the division line.

SEC. 1. If any person shall desire to plant or make a hedge fence on any line separating his lands, or enclosures from the lands, or enclosures of any other person, or persons, he shall be allowed to make or build a fence sufficient to protect the hedge and set the same five feet beyond the line on the adjoining lands and keep the same there, not more than five years, and free from weeds, and then he shall be allowed to remove the same, and during which time he shall be permitted to cultivate the land thus enclosed for the benefit of the hedge; *provided*, he shall enter upon the cultivation of said hedge within twelve months from the time said fence is removed on the adjoining land.

Builder of hedge on entire division line to receive pay for one half.

SEC. 2. When any person builds a hedge on the entire line between his own and unenclosed lands, when said lands are enclosed the owner thereof shall pay for one half of said hedge the value to be ascertained by the fence viewers, and the manner of proceeding in this respect shall conform to the provisions of the law now in force in relation to the ascertainment of the value of partition fences with like remedies; the maker of said hedge to select his own half thereof; *provided*, this act shall not apply to town lots.

CHAPTER 5.

OF LOST GOODS.

SECTION 1509. If any person shall hereafter stop or take up any raft of logs, or part thereof, or any logs suitable for making lumber, or hewn timber or sawed lumber, found adrift on any water-course within the limits or upon the boundaries of this state, such person, within five days thereafter, provided the same shall not have been previously restored to the owner, shall go before some justice of the peace or notary public of the county in which the same was taken up, and make affidavit in writing, setting forth an exact description of the articles found, and stating when and where the same were found, the number of logs or other pieces, and the marks and brands thereon, and that the same have not been altered or defaced since the taking up by him or by any other person to his knowledge. And such justice of the peace or notary public, within five days thereafter, shall transmit such affidavit to the county auditor of said county, and the said auditor shall thereupon file the same in his office, and enter in his estray-book the description of the said property, the time and place, when and where, and the name and residence of the person by whom the same was taken up, and the said auditor shall also publish

Rafts, logs, and lumber: proceedings when taken up.
14 G. A. ch. 20, § 1, 5.

a notice thereof for three weeks successively in some newspaper printed in the county.

[The changes from the printed code are in accordance with the "errata" as given in that volume.]

SEC. 1510. In all cases where the value of the articles so taken up shall not exceed five dollars, and no person shall appear to claim and prove the same within three months after the publication of such notice, then the property in the same shall vest in the person taking them up; but if the value thereof shall exceed five dollars, and the same be not claimed or proven within six months after such publication, then the finder shall deliver them to the sheriff of said county, and thereupon the same proceedings shall be had, and the same disposition be made of the proceeds arising from the sale thereof, as is provided for in section fifteen hundred and thirteen of this chapter in relation to boats, vessels, etc., the value of which exceeds twenty dollars.

Disposition of
property un-
claimed.
Same, §§ 2, 5.

SEC. 1511. As a reward for the taking up of any such boards, timber, logs, rafts of logs, or any part thereof, there shall be paid by the owner to the person taking up the same, for each log, not exceeding ten, twenty-five cents; for each log exceeding ten and not exceeding fifty, twenty cents; and for sawed lumber, fifty cents per thousand feet.

Compensation
for.
Same, §§ 3, 5.

SEC. 1512. If any person shall stop or take up any vessel or water-craft found adrift within the limits or upon the boundaries of this state, of the value of five dollars or upwards, including her cargo, tackle, rigging, and other appendages, such person, within five days thereafter, provided the same shall not have been previously proven and restored to the owner, shall go before some justice of the peace in the township where the craft or vessel is found of the proper county, and make affidavit in writing, setting forth the exact description of such vessel or water craft; where and when the same was found; whether any, and if so, what cargo, tackle, rigging, or other appendages, were found on board or attached thereto; and that the same has not been altered or defaced, either in the whole or in part, since the taking up, either by him, or by any other person, to his knowledge; and the said justice shall thereupon issue his warrant, directed to some constable of his township or district, commanding him to summon three respectable householders of the neighborhood, who shall proceed without delay, to examine and appraise such boat or vessel, her cargo, or tackle, rigging, and all other appendages as aforesaid, and to make report thereof, under their hands, to the justice issuing such warrant, who shall enter the same, together with the affidavit of the taker-up at large in his estray book; and, within five days, shall transmit a certified copy thereof to the county auditor of the proper county, to be by him recorded in his estray book and filed in his office.

Justice to issue
warrant.

Report

Estray book.

Record

SEC. 1513. In all cases where the appraisement of any such boat or vessel, including her cargo, tackle, rigging, or other appendages, shall not exceed the sum of twenty dollars, the taker-up shall advertise the same on the door of the court house and in three other of the most public places in the county within five days after the appraisement, and if no person shall appear to claim and prove such boat or vessel within six months from the time of the vest.

Value less than
twenty dollars:
advertisement.
R. § 1507.

When value is
over twenty
dollars.

- Notice.** taking up, the property in the same shall vest in the taker-up; but if the value thereof shall exceed the sum of twenty dollars, the county auditor, within five days from the time of reception of the justice's certificate at his office, shall cause an advertisement to be set up on the door of the court house, and at three other of the most public places of the county; and, also, a notice thereof to be published for three weeks successively in some public newspaper printed in this state, and if the said boat or vessel be not claimed or proven within ninety days after the advertisement of the same as aforesaid, the taker-up shall deliver the same to the sheriff of the county wherein such boat or vessel may have been taken up, who shall thereupon proceed to sell the same at public auction to the highest bidder for ready money, having first given ten days' notice of the time and place of sale; and the proceeds of all such sales, after deducting the cost and other necessary expenses, shall be paid into the county treasury.
- Newspapers.**
- Sale.**
- Proceeds.**
- Money, bank notes, etc.; description of R. § 1508.**
- Duty of justice.** SEC. 1514. If any person shall find any lost goods, money, bank notes, or other things of any description whatever, of the value of five dollars and upwards, such person shall inform the owner thereof, if known, and make restitution of the same without any compensation whatever, except the same be voluntarily given; but if the owner be unknown, such person shall, within five days after such finding, take such goods, money, bank notes, or other things, before some justice of the peace of the proper county, and make affidavit of the description thereof, the time and place, when and where the same was found, and that no alteration had been made in the appearance thereof since the finding of the same; whereupon the justice shall enter a description of the property, and the value thereof, as near as he can ascertain, in his estray book, together with the affidavit of the finder; and shall, also, within five days transmit to the county auditor a certified copy thereof, to be by him recorded in his estray book and filed in his office.
- [The change of "county auditor" for "clerk of the district court" as given in the printed code is in accordance with the "errata," noted in that volume.]
- When value exceeds ten dollars; advertisement. R. § 1509.**
- Title vests.**
- When more than ten dollars.**
- Newspaper.**
- Proceeds.**
- SEC. 1515. In all cases where such lost goods, money, bank notes, or other things, shall not exceed the sum of ten dollars in value, the finder shall advertise the same on the door of the court house, and three other of the most public places in the county; and if no person shall appear to claim and prove such money, goods, bank notes, or other things, within twelve months from the time of such advertisement, the right to such property when the same shall consist in goods, money, or bank notes, shall be vested in the finder; but if the value thereof shall exceed the sum of ten dollars, the county auditor, within five days from the receipt of the justice's certificate, shall cause an advertisement to be set upon the court house door, and in three of the most public places in the county; and also a notice thereof to be published for three weeks successively in some public newspaper printed in this state; and if the said goods, money, bank notes, or other things, be not reclaimed within six months after the finding, the finder, if the same shall consist in money or bank notes, shall deliver the same to the county treasurer, after deducting the necessary expenses hereinafter provided for; if in bills, notes of hand, patents, deeds,

mortgages, or other instruments of value, the same shall be delivered to the county auditor, to be preserved in his office for the benefit of the owner, whenever legal application shall be made therefor; if in goods, or merchandise, the same shall be delivered to the sheriff of the county, who shall thereupon proceed to sell the same at public auction to the highest bidder for ready money, having first given ten days' notice of the time and place of such sale; and the proceeds of all such sales, after deducting the costs and other expenses, shall be paid into the county treasury.

SEC. 1516. In all cases where any vessel or water craft shall be taken up, or any goods, money, or bank notes shall be found as aforesaid, which shall be of a value less than five dollars, the finder shall advertise the same by setting up three advertisements in the most public places in the neighborhood; but in such cases he shall keep and preserve the same in his possession, and shall make restitution thereof to the owner, without fee or reward, except the same be given voluntarily, whenever legal application be made for the same, provided it shall be done in three months from such taking up or finding; but if no owner shall appear to claim such property within the time aforesaid, the exclusive right to the same shall be vested in the finder or taker-up.

SEC. 1517. In any case where a claim is made to property found or taken up, and the ownership of the property cannot be agreed upon by the finder and claimant, they may make a case before any justice of the peace, who may hear and adjudicate it, and if either of them refuses to make such case, the other may make an affidavit of the facts which have previously occurred, and the claimant shall also verify his claim in his affidavit, and the justice may take cognizance of and try the matter on the other party having one day's notice, but there shall be no appeal from the decision. This section does not bar any other remedy given by law.

SEC. 1518. As a reward for the taking up of all boats and other vessels, and for finding of lost goods, money, bank notes, and other things, before restitution of the property or proceeds thereof shall be made, the finder shall be entitled to ten per cent. upon the value thereof, in addition to which said allowance the owner shall also be required to pay to the taker-up, or finder, all such costs and charges as may have been paid by him for services rendered as aforesaid, including the cost of publication, together with reasonable charges for keeping and taking care of such property, which last mentioned charge, in case the taker-up, or finder, and the owner cannot agree, shall be assessed by two disinterested householders of the neighborhood, to be appointed by some justice of the peace of the proper county, whose decision, when made, shall be binding and conclusive on all parties.

SEC. 1519. The net proceeds of all sales made by the sheriff, and all money or bank notes paid over to the county treasurer, as directed in this chapter, shall remain in the hands of the county treasurer in trust for the owner, if any such shall apply in one year from the time the same shall have been paid over; but if no owner shall appear within the time aforesaid, the said money shall be considered as forfeited, and the claim of the owner thereto forever barred, in which event the money shall

remain in the county treasury for the use of common schools in said county.

Taker up not accountable for accidents.
R. § 1517.
14 G. A. ch. 20.
§ 4.

SEC. 1520. If the taker-up of any water craft, raft, logs, timber or boards, or finder of lost goods, bank notes, or other things, shall be faithful in taking care of the same, and if any unavoidable accident shall happen thereto, without the fault or neglect of the finder or taker-up before the owner shall have an opportunity of reclaiming the same, such taker-up or finder shall not be accountable therefor; *provided*, that in cases of accident as aforesaid, the taker-up or finder, within ten days thereafter, shall certify the same under his hand to the county auditor, who shall make an entry thereof in his estray book.

Penalty for disposing of property.
R. § 1518.
14 G. A. ch. 20.
§ 4.

SEC. 1521. If any person shall trade, sell, or loan, out of the limits of this state, any such property as may at any time be taken up or found as aforesaid before he shall be vested with the right to the same, agreeably to the foregoing provisions, he shall forfeit and pay double the value thereof, to be recovered by any person who shall sue for the same, in any court, or before any justice of the peace having jurisdiction thereof; one half thereof shall go to the person suing, and the other half to the county aforesaid.

Penalty for failure to comply.
R. § 1519.
14 G. A. ch. 20.
§ 4.

SEC. 1522. If any person shall take up any boat or vessel, or any raft, logs, timber or boards, or shall find any goods, money, bank notes, or other things, and shall fail to comply with the requisitions of this chapter, every such person so offending shall forfeit and pay the sum of twenty dollars, to be recovered before any justice of the peace by any person who will sue for the same, one half for the use of the person suing, and the other half to be deposited in the county treasury for the use of common schools; but nothing herein contained shall prevent the owner from having and maintaining his action for the recovery of any damage he may sustain.

A failure to take the steps here | where the owner was not known at contemplated will not render the tin- | the time of the taking: *The State v. der guilty of larceny under § 3907, | Dean, 49-73.*

CHAPTER 6.

OF INTOXICATING LIQUORS.

Sale of prohibited: declar-
ed a nuisance.
R. § 1559.

SECTION 1523. No person shall manufacture or sell, by himself, his clerk, steward, or agent, directly or indirectly, any intoxicating liquors except as hereinafter provided. And the keeping of intoxicating liquor, with the intent on the part of the owner thereof, or any person acting under his authority, or by his permission, to sell the same within this state contrary to the provisions of this chapter, is hereby prohibited, and the intoxicating liquor so kept, together with the vessels in which it is contained, is declared a nuisance, and shall be forfeited and dealt with as hereinafter provided.

The prohibitory act of 1855 considered and held not in conflict with the provisions of the state constitution: *Santo v. The State*, 2-165. The act of 1857, authorizing the people of each county to vote as to whether the provisions of the act of 1855 should be repealed in that county and those of the act of 1857 substituted, held unconstitutional as making the repeal of a statute dependent upon a vote of the people: *Geebrick v. The State*, 5-491. And the act of 1870 (13 G. A., ch. 82), providing for the submission to vote of the question whether the sale of ale, wine and beer should be prohibited, was also held unconstitutional as depending for its validity upon popular vote: *The State v. Weir*, 33-134.

The provisions of the prohibitory liquor law are not in conflict with the constitution nor laws of the U. S.: *Santo v. The State*, 2-165; *The State v. Carney*, 20-82. As to the effect of

U. S. internal revenue license, see notes to § 1543.

To authorize the forfeiture of liquors it must be shown that they are kept with intent to sell *in violation of law*: *The State v. Harris*, 36-136. The keeping of intoxicating liquors with no intent to sell within the state in violation of law is not forbidden. In the absence of such intention the possession is lawful, and will be protected: *Niles v. Fries*, 35-41.

When liquors are so compounded with other substances as to lose their characteristics as intoxicating liquors, and are no longer desirable for use as a stimulating beverage, their sale is not prohibited; but if, notwithstanding other ingredients have been mixed therewith, they retain their character and are capable of use as a beverage, they fall under the ban of the law. The question is one for the jury: *The State v. Laffer*, 38-422.

SEC. 1524. Nothing in this chapter shall be construed to forbid the sale by the importer thereof, of foreign intoxicating liquor imported under the authority of the laws of the United States regarding the importation of such liquors and in accordance with such laws; provided, that the said liquor at the time of said sale by said importer, remains in the original casks or packages in which it was by him imported, and in quantities not less than the quantities in which the laws of the United States require such liquors to be imported, and is sold by him in said original casks or packages and in said quantities only; and nothing contained in this law shall prevent any persons from manufacturing in this state, liquors for the purpose of being sold according to the provisions of this chapter, to be used for mechanical, medicinal, culinary, or sacramental purposes.

In a prosecution under § 1543, for using a building for the purpose of selling, etc., it is not necessary for the State to negative the exceptions contained in this section. They must be proved by way of defense: *The State*

Importer: limitation on.
R. § 1560.

Distillers.

v. Becker, 20-438.

A manufacturer as herein specified, has no right to sell without the permit provided for in § 1526: *Becker v. Bettin*, 39-668.

SEC. 1525. Every person who shall manufacture any intoxicating liquors as in this chapter prohibited, shall be deemed guilty of a misdemeanor, and shall pay, on his first conviction for said offense, a fine of one hundred dollars and the costs of prosecution, or shall stand committed thirty days, unless the fine be sooner paid; on his second conviction, he shall pay a fine of two hundred dollars, and the costs of prosecution, and shall stand committed sixty days unless the fine be sooner paid. And on the third and every subsequent conviction for said offense, he shall pay a fine of two hundred dollars and the costs of prosecution, and shall be imprisoned in the county jail ninety days.

SEC. 1526. Any citizen of the state, except hotel-keepers, keepers of saloons, eating-houses, grocery keepers, and confectioners, is hereby permitted within the county of his residence to

Penalty for
manufacturing
R. § 1561.

First offense.

Second.

Third.

Permit to sell:
how obtained.
R. § 1570.

buy and sell intoxicating liquors for mechanical, medicinal, culinary, and sacramental purposes only, provided he shall first obtain permission from the board of supervisors of the county in which such business is conducted as follows.

Liquors thus held for the purpose of lawful sale are not subject to seizure, and the possession thereof may be lawful although they be bought of one not authorized to sell: *Niles v. Fries*, 35-41.

The provision that a permit shall only be granted to persons of good moral character, is not in conflict with either § 1 or § 6 of art. 1 of the state constitution: *In re Ruth*, 32-250.

An indictment for unlawful sale need not negative the authority of defendant to sell as here provided. Such authority, if it exists, must be

pleaded in defense: *The State v. Beneke*, 9-208; *The State v. Collins*, 11-141.

A person having a permit to sell is only bound to exercise due diligence and act in good faith in determining whether the person buying intends to use the liquors for a lawful purpose: *Taylor v. Pickett* 52-467.

Selling without a permit may be punished both under § 1540 and § 1543: *The State v. Waynick*, 45-516.

A manufacturer cannot sell without a permit: See note to § 1524.

Same.
14 G. A. ch. 24.
§ 1.

Bond.
Same, § 2.

SEC. 1527. He shall first procure a certificate signed by a majority of the legal electors of the township, town, or ward, in which he desires to sell said liquors, that he is a citizen of the county and state, that he is of good moral character, and that they believe him to be a proper person to buy and sell intoxicating liquors for the purposes named in the preceding section.

SEC. 1528. He shall also make and file a bond, to be approved by the auditor of the county where application is made, in the sum of three thousand dollars, with two or more sureties, who shall justify in double the amount of said bond, conditioned that he will carry out the provisions of all laws now or hereafter in force relating to the sale of intoxicating liquors, and which said bond shall run in the name of the county for the benefit of the school fund.

In an action on such bond held, known, to be by them used as a beverage, etc., was sufficient: *Jones Co. v. Sales*, 25-25.

Auditor fix time for hearing: publication in newspaper.
R. § 1576.
12 G. A. ch. 128,
§ 1.

Action by board: cause shown.
Same, § 2.

SEC. 1529. Upon the presentation of such certificate and bond to the county auditor, a day shall be fixed by said auditor for the final hearing of the application by the board of supervisors, and notice thereof given by publication in at least one newspaper published in the county, or by posting such notice in the township, town, or ward, in which the business is to be conducted. Such publication or posting shall be at least ten days prior to the time of final hearing, and the applicant shall pay the expenses thereof in advance.

SEC. 1530. At such final hearing, any resident of the county may appear and show cause why such permit should not be granted, and the same shall be refused unless the board shall be fully satisfied that the requirements of the law have, in all respects, been fully complied with, that the applicant is a person of good moral character, and that, taking into consideration the wants of the locality, and the number of permits already granted, such permit would be necessary and proper for the accommodation of the neighborhood.

SEC. 1531. Every permission so granted shall specify the house in which intoxicating liquors may be sold by virtue of the same, and the length of time the same shall be in force, which in no case shall exceed twelve months.

SEC. 1532. The bond shall be deposited with the county auditor, and suit shall be brought thereon at any time by the district attorney, in case the conditions thereof, or any of them, shall be broken. The principal and sureties therein, shall also be jointly and severally liable for all civil damages, costs, and judgments, that may be obtained against the principal in any civil action, brought by a wife, child, parent, guardian, employer, or other person, under the provisions of sections fifteen hundred and fifty-six, fifteen hundred and fifty-seven, and fifteen hundred and fifty-eight of this chapter. All other moneys collected on such bond shall go to the school fund of the county.

In case of a sale for purposes not specified in the permit, the defendant is not only liable on his bond, but also

to a criminal prosecution for selling in violation of law: *The State v. Adams*, 20-486.

SEC. 1533. The account book of purchases and sales, from which the reports hereinafter mentioned are made, shall at all times be subject to the inspection of the district or circuit judge, district attorney, sheriff, or any constable or marshal, grand jurors, or of all justices of peace of the county, and such other persons as may be authorized by law to examine the same, and shall be produced by the party keeping the same, to be used as evidence on the trial of any prosecution against him, or against liquors alleged to have been seized from him or his house, on notice duly served that the same will be required as evidence.

SEC. 1534. Any permit procured or obtained under this chapter by any person not entitled to the same by the provisions hereof, shall be deemed fraudulent and void; and any one who, after obtaining such permit, shall enter upon or be engaged in any pursuit in consequence of which he would not be eligible to obtain such permit, shall be deemed to have abandoned the same, and shall thereafter claim no protection thereby.

SEC. 1535. When any resident of the county shall file a written information, on oath, before any district judge, charging any one now holding, or who may hereafter hold such privilege, with violating the law, either by failing to keep a correct record of purchase or sale, or by making false entries in such record or account, or by selling colorably, and under pretence of complying with the law, but substantially in violation thereof, or when any sheriff, constable, or marshal of the county shall, in his official character, make, sign, and file such written information, the district judge shall issue his notice to the accused, to appear before him in court, at a time fixed, to show cause why his permit shall not be vacated; and for the purpose of trial, either party may have witnesses summoned as in other cases. The defendant may answer the complaint or charge, and the district court, either on default or on answer, or on finding any of the charges sustained by proof, shall revoke the permission to the party to sell liquor, and shall adjudicate the defendant to pay the costs; and no person whose permission shall be revoked by the district court, shall be capable of

Permit to
specify place:
time.
§ 2.

9 G. A. ch. 94.

R. § 1576.

9 G. A. ch. 47.

§ 3.

Action on
bond: to what
extent: sure-
ties liable.

R. § 1576.

9 G. A. ch. 47.

§ 3.

Book of sales
kept: subject
to inspection:
production of.
9 G. A. ch. 94.

§ 3.

Fraudulent, or
abandoned
permit.
Same, § 8.

§ 8.

Permit vaca-
ted.
Same, § 4.

§ 4.

For false rec-
ord: selling
colorably.

§ 4.

Information.

§ 4.

Trial.

of holding such privilege again within this state for the space of two years thereafter.

SEC. 1536. When intoxicating liquor shall be seized under a search warrant by virtue of the laws now in force, it shall be no bar to the confiscation and destruction of the same, that the party claiming the same has a permit under this or any former law, if the court or jury trying the facts shall be satisfied from the proof, that the defendant has sold such liquors in violation or evasion of law and at the time of the seizure had the liquors in question, with the intention of selling the same contrary to law, and any judgment of a competent tribunal condemning liquors seized under such warrant, from any person holding such permit, or convicting him of selling contrary to law, shall work a forfeiture of his privilege.

SEC. 1537. No person having a permit to sell intoxicating liquors under this chapter, shall sell the same at a greater profit than thirty-three per cent. on the cost of the same, including freights, and every person having such permit, shall make on the last Saturday of every month, a return in writing to the auditor of the county, showing the kind and quantity of the liquors purchased by him since the date of his last report, the price paid, and the amount of freights paid on the same; also the kind and quantity of liquors sold by him since the date of his last report, to whom sold, for what purpose, and what price, also the kind and quantity of liquors remaining on hand, which report shall be sworn to by the person having the said permit, and shall be kept by the auditor, subject at all times to the inspection of the public.

SEC. 1538. Any person having such permit, who shall sell intoxicating liquors at a greater profit than is herein allowed, or who shall fail to make monthly return to the auditor as herein required, or shall make a false return, shall forfeit and pay to the school fund of the county the sum of one hundred dollars for each and every violation of the provisions of this chapter, to be collected by civil action upon his bond by any citizen of the county, before any court having jurisdiction of the amount claimed, and for the second conviction under the provisions of this chapter the person convicted shall forfeit his permit to sell.

SEC. 1539. It shall be unlawful for any person to sell or give away by agent or otherwise, any spirituous or other intoxicating liquors, including wine or beer, to any minor for any purpose whatever, unless upon the written order of his parent, guardian, or family physician, or to sell the same to any intoxicated person, or to any person who is in the habit of becoming intoxicated, and any person violating the provisions of this section shall forfeit and pay to the school fund the sum of one hundred dollars for each offense, to be collected by action against him, or by action against him and the sureties on his bond, if one has been given, by any citizen in the county.

This section applies not only to persons having a permit to sell liquors, but to all persons: *Cobleigh v. McBride*, 45-116, 120.

To constitute the offense it is not necessary that defendant should have known that the person to whom sale

was made was a minor. Knowledge of such fact need neither be charged nor proved: *Jamison v. Burton*, 43-282. So in case of sale to a person in the habit of becoming intoxicated, it is immaterial whether the seller knew the habits of such person. He sells

Permit no bar
to destruction
of liquor.
Same, § 5.

Profit on sales
of
14 G. A. ch. 24,
§ 3.

Monthly re-
turn.

Contents.

Penalty.
Same, § 4.

Penalty for
selling or giv-
ing to minors
or intoxicated
persons.
Same, § 5.

at his peril: *Dudley v. Sautbine*, 49-650.

In case of sale to a minor the consent of the parent will be no defense unless it is in writing: *The State v. Coenan*, 48-567.

The principal is liable for a sale made by an agent in violation of this section, although the agent was positively forbidden to sell to such persons generally, or to the particular person to whom sale was made: *Dudley v. Sautbine*, 49-650.

SEC. 1540. If any person, not holding such a permit, by himself, his clerk, servant, or agent, shall, for himself, or any person else, directly or indirectly, or on any pretense, or by any device, sell, or in consideration of the purchase of any other property, give to any person any intoxicating liquor, he shall be deemed guilty of a misdemeanor, and shall pay, on his first conviction for said offense, a fine of twenty dollars and the costs of prosecution, and shall stand committed ten days, unless the same be sooner paid; on the second conviction for said offense, he shall pay a fine of fifty dollars and the costs of prosecution, and shall stand committed thirty days, unless the same be sooner paid, and on the third and every subsequent conviction for said offense he shall pay a fine of one hundred dollars and the costs of prosecution, or shall be imprisoned in the county jail not less than three nor more than six months. And in default of the payment of the fines and costs provided for the first and second convictions under this section, the person so convicted shall not be entitled to the benefit of chapter forty-seven, title twenty-five of this code, until he shall have been imprisoned sixty days. All clerks, servants, and agents, of whatsoever kind, engaged or employed in the manufacture, sale, or keeping for sale, in violation of this chapter, of any intoxicating liquor, shall be charged and convicted in the same manner as principals may be, and shall be subject to the penalties herein provided. Indictments and informations for violations under this section may allege any number of violations of its provisions by the same party, but the various allegations must be contained in separate counts, and the person so charged may be convicted and punished for each of the violations so alleged as on separate indictments or informations; but a separate judgment must be entered on each count on which a verdict of guilty is rendered. The second and third convictions mentioned in this section shall be construed to mean convictions on separate indictments or informations.

An information charging defendant with selling, etc., is sufficient without stating the *method* in which the sale was accomplished. A selling committed in any of the different methods here referred to, constitutes one and the same offense: *Devine v. The State*, 4-443.

Any number of violations may be charged in separate counts and a separate conviction had on each: *Walter v. The State*, 5-507; but the first and

The sale of wine or beer to one of the classes of persons here mentioned, resulting in injury such as is contemplated in § 1557, will give a right of action under that section: *Jewett v. Wanshura*, 43-574.

Under § 1554, this section is to be construed as prohibiting the *giving* as well as the *sale* to an intoxicated person: *Church v. Higham*, 44-482.

The action for the benefit of the school fund may be brought by a citizen as well as by the treasurer: *Ibid.*

Sales: penalty.
R. § 1502
C. 51, 22:33-1.

First offense.
Second.

Third.

Clerks: agents.

Any number of violations charged in same indictment.

second, or second and third offenses cannot be charged in the same indictment or information: *The State v. Leis*, 11-416.

Under an information charging a second offense and a former conviction, defendant may be found guilty of a first offense. The latter is necessarily included in the former under § 4465: *The State v. Ensley*, 10-149.

An information for an offense un-

der this section should charge that defendant sold, etc., to some person, giving the name if known: *The State v. Allen*, 32-491.

An indictment charging defendant with keeping for sale and selling intoxicating liquors, is good without the allegation that they were so kept and sold in violation of law: *The State v. Jordan*, 39-387.

A person selling without a license may also be punished under § 1543, either independently or in addition to the punishment under this section: *The State v. Waynick*, 45-516.

A previous conviction not being shown, it is erroneous to impose a greater fine than twenty dollars: *The State v. Walters*; 5-507; but where on appeal the State offered to remit the excess, the supreme court so modified the judgment and affirmed it: *The State v. Shaw*, 23-316.

The special provisions of this section as to length of time of imprisonment will govern, rather than the general provisions of § 4509: *Ibid.*

The giving, etc., of intoxicating liquors is not an offense under this section, unless it is "in consideration of the purchase," etc.; and the fact that the liquors were so given should be averred: *The State v. Finan*, 10-19.

That defendant acted in the selling as the clerk of another, or as a volunteer and without pecuniary reward, is no defense. Clerks are also liable equally with their principals, and it is no defense that the principal has been convicted for the same act: *Ibid.*

Under a previous act, held, that while a person holding a permit was liable on his bond for selling for improper purposes, he was also liable to a criminal prosecution: *The State v. Adams*, 20-4-6.

A U. S. internal revenue license is no defense in a prosecution for selling contrary to the state law: See notes to § 1543.

Sale of mixed
liquors: pun-
ished.
R. § 1587.

Owning or
keeping with
intent to sell.
R. § 1583.

Penalty: first
offense.

Second.

Third.

Presumptive
evidence.

SEC. 1541. Any person who shall mix any intoxicating liquor with any beer, wine, or cider by him sold, and shall sell, or keep for sale, as a beverage, such mixture, shall be deemed guilty under the preceding section, and shall be punished accordingly.

SEC. 1542. No person shall own, or keep, or be in any way concerned, engaged, or employed, in owning or keeping any intoxicating liquor with intent to sell the same in this state, or to permit the same to be sold therein in violation of the provisions hereof, and any person who shall so own or keep, or be concerned, engaged, or employed in owning or keeping such liquor with any such intent, shall be deemed guilty of a misdemeanor, and shall, on his first conviction for said offense, pay a fine of twenty dollars and the cost of prosecution, and stand committed until the same be paid. On his second conviction for said offense, he shall pay a fine of fifty dollars and the costs of prosecution, and shall stand committed until the same be paid, and on his third and every subsequent conviction for said offense, he shall pay a fine of one hundred dollars and the costs of prosecution, or shall be imprisoned in the county jail not less than three nor more than six months.

And upon the trial of every indictment or information for violations of the provisions of this section, proof of the finding of the liquor named in the indictment or information in the possession of the accused in any place except his private dwelling house, or its dependencies, or in such dwelling house or dependencies if the same be a tavern, public eating house, grocery, or other place of public resort, shall be received and acted upon by the court as presumptive evidence that such liquor was kept or held for sale contrary to the provisions hereof.

An indictment charging that "defendant did keep and was concerned, &c., in owning and keeping intoxicating liquors to sell," held to charge but one offense: *Vaughn v. The State*, 5-369.

One who acts as agent or clerk of a social club, to keep and deal out its liquors to members purchasing and presenting tickets, may be indicted and punished under this section: *The State v. Mercer*, 32-405.

The provision that the finding, etc., shall be presumptive evidence, etc., is not unconstitutional: *Santo v. The State*, 2-165, 214. But it would seem that such presumption would not attach to liquor *in transitu*, and it is doubtful whether it may be made except upon the trial of an indictment

or information. In an action against a carrier for damages for the loss of liquor delivered to it for transportation, held that the carrier could not set up as a defense that the keeping of such liquor was unlawful: *Bowen v. Hale*, 4-430; but see *Sommer v. Cate*, in notes to § 1559.

SEC. 1543. In cases of violation of the provisions of either of the three preceding sections, or of section fifteen hundred and twenty-five of this chapter, the building or erection of whatever kind, or the ground itself, in or upon which such unlawful manufacture or sale, or keeping with intent to sell, of any intoxicating liquor is carried on, or continued, or exists, is hereby declared a nuisance, and may be abated as the law provides; and, in addition to the penalties prescribed in said sections, whoever shall erect, or establish, or continue, or use any building, erection, or place for any of the purposes prohibited in said sections, shall be deemed guilty of a nuisance, and may be prosecuted and punished accordingly, in the manner provided by law. And proof of the manufacture, sale, or keeping with intent to sell, of any intoxicating liquor in violation of the provisions of this chapter, in or upon the premises described by the party accused, or by any other person under the authority or by the permission of the party accused, shall be presumptive evidence of the offense provided for in this section.

The offense of nuisance as here contemplated may be committed by the manufacture, or the sale, or the keeping with intent to sell, contrary to law. While an indictment charging the offense as committed in any one of these three ways would be sufficient, yet one charging its commission by any two, or all three of the specified unlawful acts, charges but one offense, and is not bad for duplicity: *The State v. Becker*, 20-438; *The State v. Baughman*, 21-497. Two indictments charging the offense as committed in two different ways, charge the *same*, and not two *separate* offenses; and the fact that the acts set out in the indictments are charged as committed at different times is not conclusive that the offenses are separate and not the same, since the time need not be proved as alleged; (§ 4301): *The State v. Layton*, 25-193.

To constitute the offense of nuisance, it is not sufficient that defendant used and kept a place with the intent and for the purpose of selling intoxicating liquors therein contrary to law. It must be charged and shown that he manufactured, or sold, or owned and kept with intent to sell, contrary to law. The presence of the liquor in the building is essential: *The*

Building de-
clared nuis-
ance.
R. 2, 1564.
C. 51, §§ 933, 935.

State v. Hass, 22-193: *The State v. Harris*, 27-129.

An indictment charging the offense as committed by using and keeping a room and place for the purpose of selling and by selling therein intoxicating liquors in violation of § 1540, held sufficient: *The State v. Freeman*, 27-333; and so held, also, where the indictment, similar to the foregoing, charged the acts as "contrary to law" without specifying the section: *The State v. Allen*, 32-248.

It is not necessary that the nuisance should continue up to and exist at the time of the indictment to make it punishable: *The State v. Schilling*, 14-455.

An indictment charging the keeping and using of "a certain building or place," or "a certain frame building," for the purposes prohibited, is sufficiently definite: *Ibid*; *The State v. Kreig*, 13-462.

A matter of local description, though it need not have been stated, must be proved as laid (*The State v. Crogan*, 8-523), but on the trial of an indictment under this section, which charged the use of a building, etc., "next door west from Chamber's store," etc., while the proof was that the building was next door west of "Chamberlain's store," the court

were equally divided as to whether the variance was fatal: *The State v. Verden*, 24-126.

The indictment need not state the names of the persons to whom liquor was sold: *The State v. Becker*, 20-498.

The State is not bound to show affirmatively that the liquors were not kept in the original vessels or packages, or that they were not sold for proper purposes, these being proper matters of defense: *Ibid.*

The fact that defendant holds a U. S. internal revenue license to retail liquors is no defense in a prosecution for illegally selling, etc., under the state law. Such license does not authorize the holder to violate the law of the state: *The State v. McCleary*, 17-44; *The State v. Carney*, 20-82; *The State v. Stutz*, 20-488; *The State v. Baughman*, 20-497. Nor is the holding of such license a circumstance tending to show a violation of the state law: *The State v. Stutz*, *supra*.

A barkeeper, or clerk, having no interest in the business, may be convicted of the crime of nuisance for the mere sale by him of intoxicating liquors in a building used for that purpose. (See § 1540): *The State v. Stucker*, 33-395.

The punishment for the crime of nuisance as here defined, is that provided in § 4092: *The State v. Mc-*

Grew, 11-112; *The State v. Collins*, 11-141; *The State v. Schilling*, 14-455; *The State v. Little*, 42-51, 54.

A party may be punished under this section, either independently of, or in addition to the punishment under § 1540: *The State v. Waynick*, 45-516.

Proof of the manufacture, sale, or keeping with intent to sell, in violation of law, is presumptive proof of the offense of nuisance: *The State v. Guisenhouse*, 20-228; *The State v. Baughman*, 20-497; even though the sale be secret and by clerk: *The State v. Freeman*, 27-333; and as proof of the finding of liquor in the possession of accused, in any place except the private dwelling, is, under the preceding section, presumptive evidence that such liquor is illegally held for sale, the proof of such finding will be, under this section, sufficient evidence of a nuisance committed by "keeping with intent to sell": *The State v. Norton*, 41-430.

Where premises are leased for a lawful purpose, to render the owner liable to the penalties herein provided, it is not sufficient to show that he knew of their unlawful use, without taking steps to prevent it; but it must appear that after he became aware of such illegal use, he did some act or made some declaration affirmatively assenting thereto: *The State v. Ballingall*, 42-87.

SEC. 1544. If any credible resident of any county, shall, before a justice of the peace for the same county, make written information, supported by his oath or affirmation, that he has reason to believe, and does believe, that any intoxicating liquor described, as particularly as may be, in said information, is in said county, in any place described, as particularly as may be, in said information, owned or kept by any person named or described in said information, as particularly as may be, and is intended by him to be sold in violation of the provisions of this chapter, said justice shall, upon finding probable cause for such information, issue his warrant of search, directed to any peace officer in said county, describing as particularly as may be, the liquor and the place described in said information, and the person named or described in said information as the owner or keeper of said liquor, and commanding the said officer to search thoroughly said place, and to seize the said liquor, with the vessels containing it, and to keep the same securely until final action be had thereon; whereupon, the said peace officer to whom such warrant shall be delivered, shall forthwith obey and execute, so far as he shall be able, the commands of said warrant, and make return of his doings to said justice, and shall securely keep all liquors so seized by him, and the vessels containing it, until final action be had thereon; provided, however, that if the place to be searched be a dwelling

Information :
search warrant
R. § 1566.
9 G. A. ch. 94,
§ 9.

Seizure. /

Return of war-
rant.

Dwelling
house.

house in which any family resides, and in which no tavern, eating house, grocery, or other place of public resort is kept, such warrant shall not be issued unless said complainant shall, on oath or affirmation, declare before said justice that he has reason to believe, and does believe, that within one month next before the making of said information, intoxicating liquor has been, in violation of this chapter, sold in said house, or in some dependency thereof, by the person accused in said information, or by his consent or permission; nor unless from the facts and circumstances disclosed by such complaint to said justice, the said justice shall be of opinion that said complainant has adequate reason for such belief.

The expression, "as particularly as may be," conveys the idea of the greatest degree of certainty, and this section is therefore not in conflict with Const., art. 1, § 8, as authorizing a search warrant to issue without the particularity of description there required; nor as authorizing unreasonable search and seizure: *Santo v. The State*, 2-165, 212.

It is not necessary that either the information or warrant should state that the former is made by a "credible resident of" the county. Such fact is to be found by the justice: *The State v. Thompson*, 44-399; *Weir v. Allen*, 47-482.

It is only liquors which are kept with the intention of selling the same in violation of law, that may be seized: *The State v. Harris*, 36-136.

It will not be presumed that the place to be searched is a dwelling house, etc., from the mere fact that the information avers that the liquors are kept in "a certain house or

place, known," etc.: *Sanders v. The State*, 2-230, 277.

A previous conviction of the owner of the liquors for selling the same will not bar a proceeding, under this section, against the liquors themselves: *Ibid.*

The jurisdiction here conferred upon justices of the peace is not exclusive, but may also be exercised by police justices in cities acting under special charter: *Weir v. Allen*, 47-482.

Liquors seized as mere contemplated cannot be taken from the officer by replevin: *Funk v. Israel*, 5-438; *The State v. Harris*, 38-242; *Weir v. Allen*, 47-482; *Fries v. Porch*, 49-351. Nor can the owner recover their value from such officer by way of damages in an action of trespass, unless he show that he possessed them with lawful intent, and was unlawfully deprived of them: *Plummer v. Harbut*, 5-308.

SEC. 1545. The information and search warrant in such case, shall describe the place to be searched, as well as the liquors to be seized, with reasonable particularity. When any liquors shall have been seized by virtue of any such warrant, the same shall not be discharged or returned to any person claiming the same, by reason of any alleged insufficiency of description in the warrant of the liquor or place, but the claimant shall only have a right to be heard on the merits of the case.

SEC. 1546. Whenever upon such warrant such liquors shall have been seized, the justice who issued such warrant shall, within forty-eight hours after such seizure, cause to be left at the place where said liquor was seized, if said place be a dwelling house, store, or shop, posted in some conspicuous place on or about said buildings, and also to be left with or at the last known and usual place of residence of the person named or described in said information as the owner or keeper of said liquor, if he be a resident of this state, a notice, summoning such person and all others whom it may concern, to appear before said justice at a place and time named in said notice, which time shall not be less than five <sup>Information: what contain.
9 G. A. ch. 94.
Notice of seizure served.
R. & L. 166.</sup> days, requiring owner to appear.

Time and place.

Trial.

By jury.

Judgment.

Costs.

Appeal.

Destruction of liquor and vessels.
R. § 1567.

nor more than fifteen days after the posting and leaving of said notices, and show cause, if any they have, why said liquor, together with the vessels in which the same is contained, should not be forfeited; and said notice shall, with reasonable certainty, describe said liquor and vessels, and shall state where, when, and why, the same were seized. At the time and place prescribed in said notice, the person named in said information, or any other person claiming an interest in said liquor and vessels, or any part thereof, may appear and show cause why the same should not be forfeited. If any person shall so appear, he shall become a party defendant in said case, and said justice shall make a record thereof. Whether any person shall so appear or not, said justice shall, at the prescribed time, proceed to the trial of said case, and said complainants, or either of them, may, and upon their default, the officer having such liquor in custody shall appear before said justice and prosecute said information, and show cause why such liquor should be adjudged forfeited. The proceeding in the trial of such case may be the same, substantially, as in cases of misdemeanor triable before justices of the peace, and if any person shall appear and be made a party defendant as herein provided, and shall make written plea that said liquor, or the part thereof claimed by him, was not owned or kept with intent to be sold in violation of this chapter, such party defendant may, at his option, demand a jury to try the issue, and, if upon the evidence then and there presented, the said justice or jury as the case may be, shall find for verdict that said liquor was, when seized, owned or kept by any person, whether said party defendant or not, for the purpose of being sold in violation of this chapter, the said justice shall render judgment that said liquor, or said part thereof, with the vessels in which it is contained, is forfeited. If no person be made defendant in manner aforesaid, or if judgment be in favor of all the defendants who appear and are made such, then the costs of the proceeding shall be paid as in ordinary criminal prosecutions where the prosecution fails. If the judgment shall be against only one party defendant appearing as aforesaid, he shall be adjudged to pay all the costs of proceedings in the seizure and detention of the liquor claimed by him up to that time, and of said trial. But, if such judgment shall be against more than one party defendant claiming distinct interests in said liquor, then the cost of said proceedings and trial shall be according to the discretion of said justice equitably apportioned among said defendants, and execution shall be issued on said judgments against said defendants for the amount of the costs so adjudged against them. Any person appearing and becoming party defendant as aforesaid, may appeal from said judgment of forfeiture as to the whole, or any part, of said liquor and vessels claimed by him and so adjudged forfeited, to the district court as in ordinary cases of misdemeanor.

The proceeding contemplated by | *State v. Harris*, 40-95. this section is a criminal one: *The* |

SEC. 1547. Whenever it shall be finally decided that liquor seized as aforesaid is forfeited, the court rendering final judgment of forfeiture, shall issue to the officer having said liquors in custody, or to some other peace officer, a written order, directing

him forthwith to destroy said liquor and vessels containing the same, and immediately thereafter to make return of said order to the court whence issued, with his doings endorsed thereon, and sworn to. Whenever it shall be finally decided that any liquor so seized is not liable to forfeiture, the court by whom such final decision shall be rendered, shall issue a written order to the officer having the same in custody, or to some other peace officer, to restore said liquor, with the vessels containing the same, to the place where it was seized, as nearly as may be, or to the person entitled to receive it, which order, the officer, after obeying the commands thereof, shall return to the said court with his doings thereon endorsed; and the costs of the proceedings in such case attending the restoration, as also the costs attending the destruction of such liquor in case of forfeiture, shall be taxed and paid in the same manner as is provided in case of ordinary criminal prosecution, where the prosecution fails.

SEC. 1548. If any person shall be found in a state of intoxication, he shall be deemed guilty of a misdemeanor, and any peace officer may, without warrant, and it is hereby made his duty to, take such person into custody, and to detain him in some suitable place, till an information can be made before a magistrate and a warrant issued in due form, upon which he may be arrested and tried, and, if found guilty, he shall pay a fine of ten dollars and the costs of prosecution, or shall be imprisoned in the county jail thirty days. But the magistrate before whom such person is tried and convicted may remit any portion of such penalty, and order the prisoner to be discharged upon his giving information, under oath, stating when, where, and of whom he purchased or received the liquor which produced the intoxication, and the name and character of the liquor obtained; *provided* such intoxicated person gives bail for his appearance before the proper magistrate, court, or jury, to give testimony in any action or complaint against the party for furnishing such liquor. In cases arising under this section, appeals may be allowed as in cases of ordinary misdemeanor within the jurisdiction of the justices of the peace.

[As amended by inserting the proviso in the latter part of the section; 15th G. A., ch. 37.]

An instruction defining "intoxication," discussed: *The State v. Huxford*, 47-16.

SEC. 1549. In any indictment or information arising under this chapter, it shall not be necessary to set out exactly the kind or quantity of intoxicating liquors manufactured or sold, or kept for purposes of sale, nor the exact time of the manufacture, or sale, or keeping with intent to sell, but proof of the violation by the accused of any provision of this chapter, the substance of which violation is briefly set forth, within the time mentioned in said indictment or information, shall be sufficient to convict such person; nor shall it be necessary in any indictment or information to negative any exceptions contained in the enacting clause, or elsewhere, which may be proper ground of defense; and, in any prosecution for a second or subsequent offense as provided herein, it shall not be requisite to set forth in the indictment or

information the record of a former conviction, but it shall be sufficient briefly to allege such conviction, nor shall it be necessary in every case to prove payment in order to prove a sale within the true meaning and intent of this chapter, and the person purchasing any intoxicating liquor sold in violation of this chapter, shall, in all cases, be a competent witness to prove such sale.

Payments for
liquor illegal.
R. § 1571.

Sales and
transfers in
consideration
of liquors void.

Negotiable
paper.

SEC. 1550. All payments or compensation for intoxicating liquor sold in violation of this chapter, whether such payments or compensation be in money, goods, land, labor, or any thing else whatsoever, shall be held to have been received in violation of law and against equity and good conscience, and to have been received upon a valid promise and agreement of the receiver in consideration of the receipt thereof, to pay on demand to the person furnishing such consideration the amount of said money or the just value of such goods, land, labor, or other thing. All sales, transfers, conveyances, mortgages, liens, attachments, pledges, and securities of every kind, which either in whole or in part shall have been made for or on account of intoxicating liquors sold in violation of this chapter, shall be utterly null and void against all persons in all cases, and no rights of any kind shall be acquired thereby, and no action of any kind shall be maintained in any court in this state for intoxicating liquors, or the value thereof, sold in any other state or country contrary to the law of said state or country, or with intent to enable any person to violate any provision of this chapter, nor shall any action be maintained for the recovery or possession of any intoxicating liquor, or the value thereof, except in cases where persons owning or possessing such liquor with lawful intent, may have been illegally deprived of the same. Nothing, however, in this section shall affect in any way negotiable paper in the hands of holders thereof in good faith for valuable consideration, without notice of any illegality in its inception or transfer, or the holder of land or other property who may have taken the same in good faith, without notice of any defect in the title of the person from whom the same was taken, growing out of a violation of the provisions of this chapter, and all evidence given in actions brought by or against such holders, shall be in no way affected by the provisions of this section.

RECOVERING BACK PAYMENTS MADE: The claim for money paid for intoxicating liquors may be set up by way of counter claim in an action on account: *Tolman v. Johnson*, 43-127.

A manufacturer not being allowed to sell without the permit required by § 1526, even to one having such permit, money paid on such sale may be recovered back: *Becker v. Betterton*, 39-668.

The giving of a note for liquors does not constitute payment, even when it has been sold and transferred by the payee, and until it is actually paid, the maker cannot maintain an

action for the amount thereof: *Carlins v. Hiller*, 34-256.

The action to recover money paid will not be barred until five years from time of payment: *Woodward v. Squires*, 41-677.

One who has exchanged property for liquors sold in violation of law may, instead of suing upon a promise to pay therefor, as here provided, treat the transaction as void and sue for the value of the property; and if accord and satisfaction is then set up as a defense, he may, in reply, set up the illegal nature of the transaction: *Smith v. Grable*, 14-429.

The action to recover money paid

is civil, and not *quasi* criminal in character: *Woodward v. Squires*, 39-435.

SALES SECURITIES, ETC., VOID: The word "securities" includes promissory notes: *Taylor v. Pickett*, 52-467.

A promissory note given in part for intoxicating liquors is wholly void: *Batch v. Gulich*, 37-212.

But where a note was given for the amount due on an account, some of the items of which were legal and others illegal as being for intoxicating liquors, and the account was continued and payments afterwards made on account generally; *held*, that the note being void, the legal items of account included therein should be regarded as still due on account, and the subsequent payments applied thereto: *Quigly v. Duffey*, 52-610.

An assignment of a contract against a third person made for intoxicating liquors, sold in violation of law is void and the assignee cannot recover against such third person thereon: *Davis v. Slater*, 17-250.

A judgment recovered on a claim founded upon the illegal sale of intoxicating liquors is not void. The defense must be interposed before judgment or it is lost: *Smith v. Leddy*, 50-112.

A person who has sold another intoxicating liquors in violation of law cannot, on the ground that the sale is void recover them back in an action of replevin. Being *particeps criminis* the law will leave the seller where it finds him: *Marienthal v. Shafer*, 6-223.

SALE MADE IN ANOTHER STATE: A contract for the sale of liquors, made in another state, with the intention of violating the laws of this state, will not be enforced in our courts, although good where made: *Doris v. Bronson*, 6-410.

Where the contract of sale is made outside of the state, it must, to render the contract void, be made to appear affirmatively that the vendor intended thereby to enable the vendee to violate the laws of this state: *Whitlock v. Workman*, 15-351. It must be shown, not only that the vendor knew of the laws of this state, but that he made the sale with the intention of enabling the purchaser to violate them: *Second Nat'l Bank, &c., v. Curren*, 36-555. But while mere knowledge on the part of the vendor that the purchaser intend to violate the liquor law of this state

may not vitiate the sale, yet it is a fact from which the jury might infer the intent to enable the buyer to violate such law: *Tegler v. Shipman*, 33-194, 200.

A sale of intoxicating liquors in violation of law, made in this state by an agent of a firm in another state is void: *Second Nat. Bank, etc., v. Curren*, 36-555; *Taylor v. Pickett*, 52-467. If the order for liquor is taken in this state by such agent, but subject to the approval or disapproval of his principal, the sale will be held as made in the state where the principal resides: *Tegler v. Shipman*, 33-194.

PROPERTY IN INTOXICATING LIQUORS AND THE RECOVERY THEREOF: While the commerce in intoxicating liquor as an article of beverage is unlawful, its character as property is not thereby destroyed; and where such liquor was seized on execution for the debt of one not its owner, *held*, that the owner might recover it by replevin, although it was kept for sale in violation of the statute: *Monty v. Arneson*, 25-383.

That intoxicating liquors are held for an unlawful purpose, is no answer to an indictment for stealing the same: *The State v. May*, 20-05; nor to an action of trespass for destroying them: *Turner v. Hitchcock*, 20-310.

Where liquor had been seized by an officer under an information which had subsequently been held defective and a return of the liquor ordered; *held that*, in an action by the owner against such officer to recover damages for a failure to return the property as so ordered, the plaintiff could not recover without proving that he owned and kept the liquor with a lawful intent: *Walker v. Shook*, 49-264.

In an action against a common carrier to recover the value of intoxicating liquors lost or destroyed by it, it is necessary for plaintiff to prove that he owned or possessed such liquors with lawful intent, (overruling *Boren v. Hall*, 4-430): *Sommer v. Cate*, 22-585.

Intoxicating liquors cannot be recovered by the owner unless he shows that they were in his possession with lawful intent, and that he was illegally deprived of them: *Funk v. Israel*, 5-438, 452; and as to action of replevin or trespass against officer seizing liquors, see notes to § 1544.

NEGOTIABLE PAPER: A party claiming the benefit of the provision

protecting bona fide holders for | son, 41-563.
 value, has the burden of showing | An assignee after maturity is not
 that he is such holder without notice: | protected: *Barlow v. Scott*, 12-63.
Rock Island National Bank v. Nel-

Officers to give information of violations. SEC. 1551. All peace officers shall see that the provisions of this chapter are faithfully executed, and when informed that the law has been violated, or when they have reason to believe that the law has been violated, and that proof of the fact can be had, such officers shall go before a magistrate and make information of the same and of the person so violating the law. Upon the filing of such information before a magistrate he shall institute a suit and proceed to the arrest, and trial thereof, according to law. Upon trials before a magistrate, it shall be the duty of the district attorney to appear for the state, unless the person filing such information shall select some other attorney. Any peace officer failing to comply with the provisions of this section, shall be guilty of a misdemeanor, and pay a fine of not less than ten nor more than fifty dollars, and a conviction shall work a forfeiture of his office.

Attorney.

Penalty.

Principal and securities liable.
R. § 1579.

Common carriers and others liable for bringing liquors into the state: exception.
R. § 1580.

Evasions.
R. § 1581.
C. § 929.

As to compensation of attorney, | information as here provided, see selected by a peace officer filing an | § 3829 and note.

SEC. 1552. The principal and securities in the bond mentioned in sections fifteen hundred and twenty-eight and fifteen hundred and twenty nine, shall be jointly and severally liable for all fines and costs that may be adjudged against the principal for any violation of any of the provisions of this chapter, and shall also jointly and severally be liable for all civil damages and costs that may be adjudged against such principal in any civil action authorized to be brought against him by the provisions of this chapter.

SEC. 1553. If any railway conductor, freight agent, express-man, depot master, or other person in the employment, or in any manner connected with any railway corporation, or any teamster, stage driver, or common carrier of any kind, or any person professing to act as agent for any other person or persons, whether within or without this state, or any other individual of whatever calling, shall bring within this state for any other person or persons, any intoxicating liquor, without first having been furnished with a copy of the certificate authorizing such person or persons to sell such intoxicating liquors, certified by some justice of the peace to be correct, such person or persons so offending, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, forfeit and pay a fine for the first offense of twenty dollars, or be imprisoned in the county jail thirty days; for the second and each subsequent offense, shall forfeit and pay a fine of fifty dollars, or be imprisoned in the county jail ninety days.

SEC. 1554. Courts and jurors shall construe this chapter so as to prevent evasion, and so as to cover the act of giving as well as selling by persons not authorized.

Applied: *Woolheather v. Risley*, 482, 484,
38-486, 491; *Church v. Higham*, 44-

SEC. 1555. Wherever the words intoxicating liquors occur in this chapter, the same shall be construed to mean alcohol and all spirituous and vinous liquors; provided, that nothing herein shall be so construed as to forbid the manufacture and sale of beer, cider from apples, or wine from grapes, currants, or other fruits grown in this state.

A defendant, relying upon the proviso of the section, must allege and prove the facts bringing him within its provisions, and it is not necessary that the prosecution charge and prove, in the first instance, that the case does not fall within the proviso: *The State v. Stapp*, 29-551; *The State v. Curley*, 33-359.

This limitation of intoxicating liquors to those that are spirituous and vinous, excluding malt liquors, is purely arbitrary, as the latter are known to be, in fact, intoxicating: *Jewett v. Wanshura*, 43-574.

The limitation of the latter part of

the proviso in regard to the place where the materials are grown, does not apply to beer: *The State v. Brindte*, 28-512.

Wine is presumed to be an intoxicating liquor, unless it is proved that it is manufactured from grapes or fruits grown in this state: *Worley v. Spurgeon*, 38-465.

Although it is lawful, under certain limitations, to sell beer, wine and cider in this state, a city may have authority to regulate the sale of even these liquors within its limits: *City of Burlington v. Kellar*, 18-59.

SEC. 1556. Any person who shall by the manufacture or sale of intoxicating liquors, contrary to the provisions of this chapter, cause the intoxication of any other person, shall be liable for and compelled to pay a reasonable compensation to any person who may take charge of and provide for such intoxicated person, and one dollar per day in addition thereto for every day such intoxicated person shall be kept in consequence of such intoxication, which sums may be recovered in a civil action before any court having jurisdiction thereof.

SEC. 1557. Every wife, child, parent, guardian, employer, or other person, who shall be injured in person or property, or means of support, by any intoxicated person, or in consequence of the intoxication, habitual or otherwise, of any person, shall have a right of action in his or her own name, against any person who shall, by selling intoxicating liquors, cause the intoxication of such person, for all damages actually sustained as well as exemplary damages; and a married woman shall have the same right to bring suits, prosecute, and control the same and the amount recovered as if a single woman; and all damages recovered by a minor under this section, shall be paid either to such minor or his parent, guardian, or next friend, as the court shall direct, and all suits for damages under this section shall be by civil action in any court having jurisdiction thereof.

This section gives a new and peculiar remedy, not only for actual but also for exemplary damages. The injury is of a peculiar character, not recognized or redressed by the common law. The evidence necessary or competent to establish the injury and its extent, is not confined within the bounds of that admissible to establish a common law tort. Evidence as to the age, condition, circumstances, etc., of the husband, his habits of industry and his ability to support his

wife before and after the acts complained of, may be received: *Dunlavy v. Watson*, 32-338. But it is error in an action by the wife to allow evidence as to number, age, etc., of children: *Huggins v. Karanagh*, 52-368.

The right of action is given against any person who actually makes the sale of the intoxicating liquor, whether he be the owner, or the son, clerk, or servant of such owner: *Worley v. Spurgeon*, 38-465.

By this section a right of action is

Definition of
"intoxicating
liquors."
R. & 1583.

9 G. A. ch. 47,

Action by per-
sons injured by
intoxicated
person.
Same, § 2.

given for the sale of wine and beer to the persons mentioned in § 1539: *Jewett v. Wanshura*, 43-574. But before the enactment of the Code there was no right of action for injuries from the sale of beer: *Woody v. Coenan*, 44-19.

An action under this section is barred in two years, under § 2529, ¶ 1. The cause of action is the selling of the intoxicating liquors, and the personal injury is that done to the person intoxicated thereby, although the right of action is in the wife, or other person as here provided: *Emmett v. Grill*, 39-690.

Exemplary damages may be allowed although no tort or breach of the peace has resulted: *Goodenough v. McGrew*, 44-670. But the guilt constituting a ground for exemplary damages must be guilt in causing the actual damages which are recoverable. Conduct, etc., of the intoxicated person which could not cause actual damage cannot be shown as a ground of exemplary damages: *Cal-loway v. Laydon*, 47-456.

The words "in person" mean "in body," and threatening language, vulgar conduct, etc., directed toward plaintiff, but not resulting in physical injury or impairment of health, do not entitle her to either actual or exemplary damages: *Ibid.*

The wife may recover damages resulting from the death of her husband caused by intoxication: *Rafferty v. Buckman*, 46-195, 200.

The wife cannot recover damages where she has herself contributed to her husband's intoxication: *Engleken v. Hilger*, 43-563; *Kearney v. Fitzgerald*, 43-580.

In an action by plaintiff suing as wife, the injury to her person or pro-

perty being proven, the fact of marriage is not essential, and she may recover without proof thereof: *Ibid.*

It is sufficient to hold a defendant liable, if it be shown that liquor sold by him contributed to the intoxication complained of: *Woolheather v. Risley*, 38-486.

A joint action will not lie against several defendants having independent places of business, where the injuries are successive and not the result of one particular intoxication. Section 2550 is not applicable in such cases: *La France v. Krayer*, 42-143. Where a joint action will not lie, each party is liable for the damages which he occasions, and a settlement with one does not bar an action against another: *Jewett v. Wanshura*, 43-574. But defendant may show that plaintiff has brought actions and obtained judgments against others for causing the same habitual intoxication, not by way of defense or mitigation of damages, but to show the actual extent of the damage caused by defendant's own act, and that he was not responsible for the entire damage resulting from such intoxication: *Ibid.*; *Ennis v. Shiley*, 47-552; *Engleken v. Webber*, 47-558; and it is error to instruct the jury that if they cannot separate the damages caused by others, they may render verdict against defendant for the whole damage: *Huggins v. Kavanagh*, 52-368.

If the damage is the proximate result of a particular intoxication, all parties contributing thereto are jointly liable, but not if it is the result of a besotted condition: *Hitchner v. Ehlers*, 44-40.

As to definition of intoxicating liquors, see § 1555 and notes.

Damages recovered: property liable for. Same, § 3.

SEC. 1558. For all fines and costs assessed, or judgments rendered, of any kind, against any person for any violation of the provisions of this chapter, the personal and real property, except the homestead as now provided by law, of such person as well as the premises and property, personal or real, occupied and used for that purpose with the consent and knowledge of the owner thereof or his agent, by the person manufacturing or selling intoxicating liquors contrary to the provisions of this chapter, shall be liable, and all such fines, costs, or judgments, shall be a lien on such real estate until paid; and where any person is required by sections fifteen hundred and twenty-eight and fifteen hundred and twenty-nine of this chapter to give a bond with sureties, the principal and sureties in the bond mentioned shall be jointly and severally liable for all civil damages, costs, and judgments, that may be adjudged against the principal in any civil action authorized to be brought against him for any violation of

the provisions of this chapter; *provided*, there shall be exempt such personal effects as may be necessary for the support of the family of defendant for six months, to be determined by the township trustees.

The right to make the judgment a lien upon the property where the business is carried on, rests in the exercise of the police power, and not in the right of eminent domain. Property can only be made liable after it has been established in a competent court by a legal jury that it was used for the illegal purpose, with the knowledge or consent of the owner, and the statute does not, therefore, authorize the taking of private property without a trial: *Polk Co. v. Hierb*, 37-361.

That under this section a party is liable to a pecuniary forfeiture, does not constitute the act or omission so punished a crime. The section is not an *ex post facto* law, nor does it impair vested rights: *Ibid.*

The court should specifically ascertain and fix the property upon which the lien should attach: *Engleken v. Webber*, 47-558, 561.

Damages recovered are not a lien upon the premises where the liquor

was sold if the property of a third party, unless such party had knowledge of and assented to the unlawful selling: *Cobleigh v. McBride*, 45-116.

The lien of the judgment upon the premises attaches only on the rendition thereof, and is subordinate to that of a mortgage previously executed: *Goodenough v. McCoid*, 44-659.

The party injured may bring her action against the seller alone, and by subsequent action against the owner enforce the judgment previously obtained; or she may join the seller and the owner of the building in the same action: *La France v. Krayser*, 42-143. In case a joint action is brought against both, the lien cannot be established until a judgment for damages is rendered, and after such judgment the action as to the establishment of the lien may be transferred to the equity docket and tried as an action in equity: *Loan v. Hiney*, 53-89.

SEC. 1559. If any one purchasing intoxicating liquors of a person authorized to sell, shall make to such person any false statement regarding the use to which such liquor is intended by the purchaser to be applied, such person so obtaining such liquor shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, forfeit and pay a fine of ten dollars, together with costs of prosecution, or shall stand committed until the same is paid. For the second offense he shall pay a fine of twenty dollars and costs of prosecution, and be imprisoned in the county jail not less than ten nor more than thirty days.

SALE OF LIQUORS WITHIN TWO MILES OF CITY LIMITS OR PLACE OF ELECTION.

[Seveneenth General Assembly, Chapter 119.]

SEC. 1. It is hereby made unlawful for any person by himself, his agent or employe, directly or indirectly to sell to any person ale, wine, beer or other malt or vinous liquor within two miles of the corporate limits of any municipal corporation; except at wholesale for the purpose of shipment to places outside of such corporation and such two miles limits, except as hereinafter provided; and excepting further, that when said two miles embrace any part of another municipal corporation, that part so embraced within said other corporation shall not be held to be affected by this act, but shall remain as heretofore exclusively under the control of the corporation within which it is situated.

SEC. 2. It is hereby made unlawful for any person by himself, his agent or employe, directly or indirectly to sell to any person,

Penalty for making false statement to the person authorized to sell.
R. § 1577.

Except at wholesale for shipment.

And when two mile limit embraces another corporation.

Unlawful to sell on election day within two miles of the polls.

May sell on prescription of physician.

Giving wine, ale, or beer in consideration of purchase of other property.

Penalty for violating the provisions of this act.

Liability of agent.

Number of allegations in information.

Conviction may be held to be a forfeiture of lease.

and upon any pretext whatever ale, wine, beer or other malt or vinous liquors upon the day on which any election is held under the laws of this state, within two miles of the place where said election is held.

SEC. 3. The foregoing sections shall not be held to include the sale, by any person holding a permit therefor under the laws of this state, of said malt or vinous liquors, when said sale is made upon the prescription therefor of a practicing physician. The provisions of this section shall be a matter of defense in any prosecution under this act.

SEC. 4. The giving to any person of ale, wine, beer, or other malt or vinous liquor, in consideration of the purchase of any other property shall be construed and held to be a sale thereof within the meaning of this act, and courts and jurors shall construe this act so as to prevent evasion.

SEC. 5. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor, and shall pay, on his first conviction for said offense, a fine of twenty dollars, and costs of prosecution, and shall stand committed five days, unless the same be sooner paid; on the second conviction for said offense, he shall pay a fine of fifty dollars and the costs of prosecution, and shall stand committed fifteen days, unless the same be sooner paid; and on the third and every subsequent conviction for said offense, he shall be punished by a fine of one hundred dollars, and shall pay the costs of prosecution, and shall stand committed for thirty days, if the same be not sooner paid, or by imprisonment in the county jail for thirty days.

SEC. 6. Any employe or agent of whatsoever kind, engaged or employed in selling, in violation of this act, shall be charged and convicted in the same manner as a principal may be, and shall be subject to the penalties and punishment in this act provided for such principal.

SEC. 7. Informations for violations under this act may allege any number of violations of its provisions by the same party, but the various allegations must be contained in separate counts, and the person so charged may be convicted and punished for each of the violations so alleged as on separate informations; but a separate judgment must be entered on each count on which a verdict of guilty is rendered. The second and third convictions mentioned in this act shall be construed to mean convictions on separate informations. If the information does not otherwise indicate, it shall be held to be for a first offense.

SEC. 8. A conviction for a violation of the provisions of this act, shall, at the option of the landlord or his agent, be held to be a forfeiture of any lease of the real estate in or upon which such sale in violation thereof is made, and such landlord or his agent shall have the right at any time within thirty days from such conviction to institute a suit of forcible entry and detainer for the possession of said real estate, and shall recover possession of such leased premises upon proof of the conviction of the tenant, his agent, servant, clerk, or any one claiming under him, of a violation of the provisions of this act, committed in or upon said leased premises.

SEC. 9. The power and jurisdiction of every municipal corporation, whether acting under general or special charter, to regulate, prohibit or license the sale of ale, wine and beer, and of the courts and officers thereof to enforce said regulations, is hereby extended two miles beyond the corporate limits of said corporation; *provided*, that this section shall not be held to authorize said corporation to license any malt or vinous liquors, other than those malt or vinous liquors which said corporation, at this date, is authorized to license.

This act *held* not to be in conflict with Const., art. 1, § 6, as not being of uniform operation, nor with Const., art. 3, § 29, as embracing more than

one subject: *The State v. Shraeder*, 51-197; *Town of Centerville v. Miller*, 51-712.

[Eighteenth General Assembly, Chapter 82.]

SEC. 1. It shall be unlawful for any person to furnish, or give, or offer to give, any intoxicating liquors including ale, wine and beer, to voters at or within one mile of the polls during the day upon which any election is held in this state, prior to the closing of the polls.

SEC. 2. Any person violating the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding one hundred dollars nor less than five dollars, or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment, in the discretion of the court, and in case of fine he shall stand committed until the same be paid.

CHAPTER 7.

OF FIRE COMPANIES.

SECTION 1560. Any person who is an active member of any fire engine, hook and ladder, hose, or any other company, for the extinguishment of fire, or the protection of property at fires under the control of the corporate authorities of any city or incorporated town, shall, during the time he shall continue an active member of such company, be exempted from the performance of any military duty, and from the performance of labor on the highways on account of poll-tax, and from serving as a juror; and any person who shall have been an active member of such company in any city or town as aforesaid, and shall have faithfully discharged his duties as such for the term of ten years, shall be forever thereafter exempted from the performance of military duty in the time of peace, from serving as a juror, and from the performance of labor on the highways.

SEC. 1561. Any person who has served in any company for the term of ten years, as provided in the preceding section, shall be entitled to receive from the foreman of the company of which he shall have been a member, a certificate to that effect, and on

Jurisdiction
of municipal
corporation.

the presentation of such certificate to the clerk or recorder of the proper city or town, such clerk or recorder shall file the same in his office, and give his certificate, under the corporate seal, to the person entitled thereto, setting forth the name of the company of which such person shall have been a member, and the duration of such membership; and such certificate shall be received in all courts and places as evidence that the person legally holding the same is entitled to the exemption hereinbefore mentioned.

Same.
13 G. A. ch. 18,
§ 2.

SEC. 1562. To entitle any person to exemption from labor on the highway before the expiration of the aforesaid term of ten years, he shall, on or before the first day of April of each year, file with the clerk or recorder of the proper city or town, a certificate signed by the foreman of the company of which said person is a member, that the person holding said certificate is an active member of said fire company, and thereupon the clerk or recorder shall enter said exemption upon the street tax list for that year.

Misrepresenta-
tion; punished.
R. § 1765.

SEC. 1563. Any person who shall either by misrepresentation or by the use of a false certificate, or the certificate of any other person, endeavor to avail himself of the benefits of this chapter, upon conviction thereof before any mayor, recorder, or magistrate of any incorporated city or town, or before any district court, shall be sentenced to imprisonment in the county jail for a period of not more than six months, or less than one month, and to pay a fine of not less than ten dollars, or more than one hundred dollars.

Destruction of
fire apparatus
punished.
R. § 1766.

SEC. 1564. Any person or persons who shall wilfully destroy or injure any engines, hose carriage, hose, hook and ladder carriage, or anything whatever, used for the extinguishment of fires, belonging to any fire company, on conviction thereof shall be sentenced to imprisonment in the penitentiary for a period of not less than one year, nor more than three years.

Removal of fire
apparatus
punished.
R. § 1767.

SEC. 1565. It shall not be lawful for any person to remove any engine or other apparatus for the extinguishment of fire, from the house or other place where the same shall be kept or deposited, except in time of fire or alarm of fire, unless properly authorized so to do by the president and director, or foreman, of the company to whom the same shall belong, or their duly authorized agent; and any person offending against the provisions of this section shall forfeit and pay a sum not less than five dollars, nor more than twenty dollars, to be sued for and recovered in the name of the state, for the use of the school fund, before any mayor, recorder, or magistrate of the city or town wherein the offense has been committed.

False alarm of
fire punished.
R. § 1768.

SEC. 1566. It shall not be lawful for any person or persons to cause false alarm of fire, either by setting fire to any combustible material, or by giving an alarm of fire without cause, and any person offending against the provisions of this section shall be fined a sum of not less than five dollars or more than twenty dollars, to be sued for and recovered as specified in the foregoing sections.

CHAPTER 8.

OF THE INSPECTION OF COAL MINES.

[This chapter, sec's 1567 to 1569, was repealed by 15th G. A., ch. 31, which in return was repealed by the following:]

[Eighteenth General Assembly, Chapter 202.]

SECTION 1. There shall be appointed by the governor, with the advice and consent of the senate, one state mine inspector, who shall hold his office for two years; subject, however, to be removed by the governor for neglect of duty, or malfeasance in office. Said inspector shall have a theoretical and practical knowledge of the different systems of working and ventilating coal mines, and of the nature and properties of the noxious and poisonous gases of mines and of mining engineering. And said inspector, before entering upon the discharge of his duties, shall take an oath, or affirmation, to discharge the same faithfully and impartially, which oath or affirmation shall be indorsed upon his commission, and his commission, so indorsed, shall be forthwith recorded in the office of the secretary of state; and such inspector shall give bond in the sum of two thousand dollars, with sureties to the approval of the governor, conditioned for the faithful discharge of his duty.

SEC. 2. Said inspector shall give his whole time and attention to the duties of his office, and shall examine all the mines in this state as often as his duties will permit, to see that the provisions of this act are obeyed; and it shall be lawful for such inspector to enter, inspect and examine any mine in this state, and the works and machinery belonging thereto, at all reasonable times, by night or by day, but so as not to unnecessarily obstruct or impede the working of the mines; and to make inquiry and examination into the state and condition of the mine, as to ventilation and general security, as required by the provisions of this act. And the owners and agents of such mines are hereby required to furnish the means necessary for such duty and inspection, of which inspection the inspector shall make a record, noting the time and all the material circumstances. And it shall be the duty of the person having charge of any mine, whenever loss of life shall occur by accident connected with the working of such mine, or by explosion, to give notice forthwith, by mail or otherwise, to the inspector of mines, and to the coroner of the county in which such mine is situated; and the coroner shall hold an inquest on the body of the person or persons whose death has been caused, and inquire carefully into the cause thereof, and shall return a copy of the verdict, and all the testimony, to said inspector. No persons having a personal interest in, or employed in the management of, or employed in the mine where a fatal accident occurs, shall be qualified to serve on the jury impaneled on the inquest.

SEC. 3. Said inspector, while in office, shall not act as an agent, or as a manager, or mining engineer, or be interested in operating any mine; and he shall annually, on or before the first day of January, make report to the governor of his proceedings, and the condition and operations of the mines in this state, enum-

Mine inspec-
tor appointed
by governor.

Duties: shall
examine
mines.

Notice of acci-
dent: inquest.

Inspector not
to be inter-
ested: to report.

rating all accidents in or about the same, and giving all such information as he may think useful and proper, and making such suggestions as he may deem important as to further legislation on the subject of mining.

Salary : office. SEC. 4. Said inspector shall receive a salary of one thousand five hundred dollars per annum, to be paid in quarterly installments, and he shall have and keep an office in the state house at Des Moines, in which shall be kept all records and correspondence, papers and apparatus, and property pertaining to his duties belonging to the state, and which shall be handed over to his successor in office.

Vacancy. SEC. 5. Any vacancy occurring when the senate is not in session, either by death or resignation, removal by the governor or otherwise, shall be filled by appointment by the governor, which appointment shall be good until the close of the next session of the senate, unless the vacancy is sooner filled, as in the first section provided.

Instrumenta. SEC. 6. There shall be provided for said inspector all instruments necessary for the discharge of his duties under this act, which shall be paid for by the state on the certificate of the inspector, and shall be the property of the state.

Map of mine. SEC. 7. The owner or agent of every coal mine shall make, or cause to be made, an accurate map or plan of the working of such mine, on a scale of not less than one hundred feet to the inch, showing the area mined or excavated. Said map or plan shall be kept at the office of such mine. The owner or agent shall, on or before the first day of September, 1880, and annually thereafter, cause to be made a statement and plan of the progress of the workings of such mine up to said date, which statement and plan shall be marked on the map or plan herein required to be made. In case of refusal on the part of said owner or agent, for two months after the time designated, to make the map or plan, or the addition thereto, the inspector is authorized to cause an accurate map or plan of the whole of said mine to be made at the expense of the owner thereof, the cost of which shall be recoverable against the owner in the name of the person or persons making said map or plan.

Outlets to mines. SEC. 8. After six months from the passage of this act it shall not be lawful for the owner or agent of any coal mine operated by shaft or slope to employ more than fifteen persons at one time to work therein, or permit more than fifteen persons at one time to work in such mine unless there are to every seam of coal worked in such mine two separate outlets, separated by natural strata of not less than fifty feet in breadth, by which shafts or outlets distinct means of egress must always be available to afford easy escape from such mine in case of explosion, cavings or falling in of either shaft. But in case of mines operated as in this section first provided, if in the judgment of the inspector an additional shaft is deemed necessary, then the same shall be provided, subject, however, to the decision of the circuit court of the county in which the mine is situated.

Same. SEC. 9. All mines hereafter opened shall be allowed one year to make outlets, as provided in section eight, when such mine is under two hundred feet in depth, and two years when such mine is over two hundred feet. But not more than twenty men shall

be employed in such mines at one time until the provisions of section eight are complied with, and after the expiration of the periods above mentioned, should said mines not have the outlets aforesaid, they must reduce their number to fifteen persons.

SEC. 10. It shall be the duty of said inspector to see that all Ventilation. coal mines are well and properly ventilated, and that such quantities of air are supplied to the miners at their several places of working in each mine as is requisite for their health and safety. The ventilation required by this section may be produced by any suitable appliances, but in case a furnace is used for ventilating purposes, it shall be built in such a manner as to prevent the communication of fire to any part of the works, by lining the up-cast with incombustible material for a sufficient distance up from said furnace.

SEC. 11. The owner or agent of every coal mine, operated by shaft or slope, in all cases where the human voice cannot be distinctly heard, shall forthwith provide and maintain a metal tube, or other suitable means for communicating, from the top to the bottom of said shaft or slope, suitably calculated for the free passage of sound therein, so that conversation may be held between persons at the bottom and top of the shaft or slope; and there shall be provided a sufficient cover overhead on all carriages used for lowering and hoisting persons, and on the top of every shaft an approved safety-gate; and also an approved safety spring on the top of every slope; and an adequate brake shall be attached to every drum or machine used for lowering or raising persons in all shafts or slopes, and a trail shall be attached to every car used on a slope; all of said appliances to be subject to the approval of the inspector.

SEC. 12. No owner or agent of any coal mine, operated by shaft or slope, shall knowingly place in charge of any engine used for lowering into or hoisting out of such mine persons employed therein, any but experienced, competent and sober engineers; and no engineer in charge of such engine shall allow any person, except such as may be deputed for that purpose by the owner or agent, to interfere with it, or any part of the machinery; and no person shall interfere or in any way intimidate the engineer in the discharge of his duties. And the maximum number of persons to ascend out of or descend into any coal mine on one cage shall be determined by the inspector, but in no case shall such number exceed ten; and no person shall ride upon or against any loaded cage or car in any shaft or slope.

SEC. 13. No boy under twelve years of age shall be allowed Boys. to work in any mine; and it shall be the duty of the agent of such mine to see that the provision of this section is not violated.

SEC. 14. In case any coal mine does not in its appliances for the safety of the persons working therein, conform to the provisions of this act, or the owner or agent disregards the requirements of this act, for twenty days after being notified by the inspector, any court of competent jurisdiction, in session or vacation, may, on application of the inspector, by civil action, in the name of the state, enjoin or restrain the said owner or agent from working or operating such mine with more than ten miners at once, until it is made to conform to the provisions of this act, and such remedy

shall be cumulative, and shall not take the place of or affect any other proceedings against such owner or agent authorized by law for the matter complained of in such action.

**Penalty for
disobedience
or neglect of
miners.**

SEC. 15. Any miner, workman, or other person, who shall knowingly injure, or interfere with any air course, or brattice, or obstruct or throw open doors, or disturb any part of the machinery, or disobey any order given in carrying out the provisions of this act, or ride upon a loaded car or wagon in a shaft or slope, or do any act whereby the lives and health of the persons, or the security of the mines and machinery are endangered ; or if any miner, or person employed in any mine governed by the provisions of this act, shall neglect or refuse to securely prop or support the roof and entries under his control, or neglect or refuse to obey any order given by the superintendent in relation to the security of the mine in the part of the mine under his charge or control, every such person shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars, or imprisonment in the county jail not exceeding thirty days.

**Charges against
inspector.**

SEC. 16. Whenever written charges *or [of]* gross neglect of duty, or malfeasance in office against any inspector, shall be made and filed with the governor, signed by not less than fifteen miners, or one or more operators of mines, together with a bond in the sum of five hundred dollars, payable to the state, and signed by two or more responsible freeholders, and conditioned for the payment of all costs and expenses arising from the investigation of such charges, it shall be the duty of the governor to convene a board of examiners, to consist of two practical miners, one mining engineer and two operators, at such time and place as he may deem best, giving ten days' notice to the inspector against whom the charges may be made, and also to the person whose name appears first in the charges; and said board, when so convened, and having first been duly sworn or affirmed truly to try and decide the charges made, shall summon any witness desired by either party, and examine them on oath or affirmation, which may be administered by any member of the board, and depositions may be read on such examination, as in other cases. And the board shall examine fully into the truth of such charges, and report the result of their investigations to the governor; and if their report shows that said inspector has grossly neglected his duties, or is incompetent, or has been guilty of malfeasance in office, it shall be the duty of the governor forthwith to remove such inspector, and appoint a successor; and said board shall award the cost and expenses of such investigation against the inspector, or the person signing said bond.

Removal.

**Miners to have
access to scales,
inspect
weights,
accounts, &c.**

SEC. 17. In all coal mines in this state, the miners employed and working therein shall, at all proper times, have right of access and examination of all scales, machinery or apparatus used in or about said mine, to determine the quantity of coal mined, for the purpose of testing the accuracy and correctness of all such scales, machinery, or apparatus, and such miners may designate or appoint a competent person to act for them, who shall, at all proper times, have full right of access and examination of such scales, machinery or apparatus, and seeing all weights and measures of coal mined,

and the accounts kept of the same; *provided*, not more than one person on behalf of the miners collectively shall have such right of access, examination and inspection of scales, weights, measures and accounts at the same time, and that such person shall make no unnecessary interference with the use of such scales, machinery, or apparatus.

SEC. 18. The owner, agent, or operator of any coal mine shall keep a sufficient supply of timber, where required to be used as props, so that the workmen may, at all times, be able to properly secure the workings from caving in; and it shall be the duty of the owner, agent, or operator to send down all such props when required.

SEC. 19. The provisions of this act shall not apply to, or affect, any coal mines in which not more than fifteen persons are employed at the same time; *provided*, that upon the application of the proprietors of, or miners in, any such mine, the inspector shall make, or cause to be made, an inspection of such mine, and direct and enforce any regulations in accordance with the provisions of this act that he may deem necessary for the safety or the health and lives of the miners.

SEC. 20. Chapter 31, acts of the fifteenth general assembly, is hereby repealed.

REGULATION OF SALE OF COAL OIL.

[Seventeenth General Assembly, Chapter 172.]

SECTION 1. The mayor and council of any city or incorporated town, or the township trustees in townships wherein no city or incorporated town is situated, may, and upon the petition of any five inhabitants thereof, shall annually appoint one or more suitable persons, not interested in the sale or manufacture of coal oil, kerosene, or the product of petroleum, to be inspectors thereof in said cities, towns, or townships, and fix their compensation, which shall not exceed five cents per package, to be paid by the party requiring their services, and who, before entering upon the duties of such office, shall take and subscribe an oath, and shall also execute a bond to the state of Iowa, in such sum and with such sureties, as shall be approved by said council or township trustees, and conditioned for the faithful performance of *his* [their] duties; and any person aggrieved by the misconduct or neglect of such inspector, may maintain suit thereon for his own use, for all damages sustained.

SEC. 2. Upon the application of any person, purchaser, manufacturer, refiner or producer of, or any dealer in such oils or fluids, said inspector shall test the same, with reasonable dispatch, by applying the proper fire-test thereto in quantities not less than one pint, as indicated and determined by some accurate instrument and apparatus, approved and used for testing the quality of such illuminating oils or fluids, which instrument or apparatus the inspector shall provide at his own expense and cost. If the oils or fluids so tested will not ignite or explode at a temperature less than one hundred and fifty degrees, Fahrenheit, to be ascertained as aforesaid, said inspector shall mark, plainly and indelibly, over his official signature, with the date thereof, on each cask, barrel,

Council or
trustees may
appoint in-
spectors.

Proceedings
in inspection
of oils.

tank or package so tested, "approved, fire-test being 150 degrees" or more, as the same may prove; but if such oils or fluids will ignite or explode at a temperature less than one hundred and fifty degrees Fahrenheit, then the inspector shall so mark on each cask, barrel, tank or package so tested, "condemned for illuminating purposes, fire-test being —— degrees," as the same may prove less than one hundred and fifty degrees Fahrenheit. Said inspector shall keep a record of all inspections made, and enter the same within twenty-four hours thereafter in a book kept for that purpose, which shall be at all times accessible for examination by any person; and upon the termination of his office, said inspector shall turn the same over to the clerk or recorder of said city, incorporated town or township.

*Penalty for
falsely brand-
ing casks, &c.*

SEC. 3. Any inspector who shall falsely brand or mark any cask, barrel, tank or package, or be guilty of any fraud, deceit, misconduct or culpable negligence in the discharge of any of his official duties, or who shall either directly or indirectly deal in any such oils or fluids, while holding the office of inspector, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding one hundred dollars, or imprisonment not exceeding thirty days, and shall be liable to the party injured for all damages occasioned thereby.

*Penalty for
selling oil not
inspected.*

SEC. 4. Any manufacturer or refiner of, or any dealer in any such oils or fluids, the product of petroleum, who shall sell or offer the same for sale, to any person, for illuminating purposes, without the same shall have been so inspected, or shall sell or offer for sale any such oils or fluids, as aforesaid, which is below the test of one hundred and fifty degrees Fahrenheit, as provided in section two of this act, or who shall use any cask, barrel, tank or package, with the inspector's brand or mark thereon, the oil or fluid therein contained not having been so inspected, or who shall counterfeit any such inspector's brand or mark, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be liable to the same penalties provided in, and subject to, the same liabilities as set forth in section three of this act.

REGULATION OF THE PRACTICE OF PHARMACY, AND THE SALE OF MEDICINES AND POISONS.

[Eighteenth General Assembly, Chapter 75.]

*Business only
to be carried
on by regis-
tered phar-
macists.*

Same.

Penalty.

SECTION 1. From and after the passage of this act it shall be unlawful for any person, not a registered pharmacist within the meaning of this act, to conduct any pharmacy, drug store, apothecary shop or store for the purpose of retailing, compounding or dispensing medicines or poisons for medical use, except as herein-after provided.

SEC. 2. It shall be unlawful for the proprietor of any store or pharmacy to allow any person except a registered pharmacist to compound or dispense the prescriptions of physicians, or to retail or dispense poisons for medical use, except as an aid to and under the supervision of, a registered pharmacist. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be liable to a fine of not less than twenty-five dollars, nor more than one hundred dollars, for each and every such offense.

SEC. 3. The governor, with the advice of the executive council, shall appoint three persons from among the most competent pharmacists of the state, all of whom shall have been residents of the state for five years, and of at least five years' practical experience in their profession, who shall be known and styled as commissioners of pharmacy for the state of Iowa; one of whom shall hold his office for one year, one for two years, and the other for three years, and each until his successor shall be appointed and qualified; and each year thereafter another commissioner shall be so appointed for three years, and until a successor be appointed and qualified. If a vacancy occur in said commission, another shall be appointed, as aforesaid, to fill the unexpired term thereof. Said commissioners shall have power to make by-laws and all necessary regulations for the proper fulfilment of their duties under this act, without expense to the state.

SEC. 4. The commissioners of pharmacy shall register in a suitable book, a duplicate of which is to be kept in the secretary of state's office, the names and places of residence of all persons to whom they issue certificates, and the dates thereof. It shall be the duty of said commissioners of pharmacy to register, without examination, as registered pharmacists, all pharmacists and druggists who are engaged in business in the state of Iowa, at the passage of this act, as owners or principals of stores or pharmacies for selling at retail, compounding or dispensing drugs, medicines or chemicals for medicinal use or for compounding and dispensing physicians' prescriptions; and all assistant pharmacists, eighteen years of age, engaged in said stores or pharmacies in the state of Iowa at the passage of this act, and who have been engaged as such in some store or pharmacy where physicians' prescriptions were compounded and dispensed, for not less than three years prior to the passage of this act: *provided, however,* that in case of failure or neglect on the part of any such person or persons to apply for registration within sixty days after they shall have been notified, they shall undergo an examination such as is provided for in section five of this act.

SEC. 5. The said commissioners of pharmacy shall, upon application, and at such time and place, and in such manner as they may determine, examine, either by a schedule of questions, to be answered and subscribed to under oath, or orally, each and every person who shall desire to conduct the business of selling at retail, compounding, or dispensing drugs, medicines or chemicals for medicinal use, or compounding or dispensing physicians' prescriptions as pharmacists, and if a majority of said commissioners shall be satisfied that said person is competent and fully qualified to conduct said business of compounding or dispensing drugs, medicines or chemicals for medicinal use, or to compound and dispense physicians' prescriptions, they shall enter the name of such person as a registered pharmacist in the book provided for in section four of this act; and all graduates in pharmacy, having a diploma from an incorporated college or school of pharmacy that requires a practical experience in pharmacy of not less than four years before granting a diploma, shall be entitled to have their names registered as pharmacists by said commissioners of pharmacy without examination.

Fee for certificate and examination. SEC. 6. The commissioners of pharmacy shall be entitled to demand and receive from each person whom they register and furnish a certificate as a registered pharmacist, without examination, the sum of two dollars; and from each and every person whom they examine orally, or whose answers to a schedule of questions are returned subscribed to under oath, the sum of five dollars, which shall be in full for all services. And in case the examination of said person should prove defective and unsatisfactory and his name not be registered, he shall be permitted to present himself for re-examination within any period not exceeding twelve months next thereafter, and no charge shall be made for such re-examination.

Quality of drugs: adulteration: penalty. SEC. 7. Every registered pharmacist shall be held responsible for the quality of all drugs, chemicals and medicines he may sell or dispense, with the exception of those sold in the original packages of the manufacturer, and also those known as "patent medicines"; and should he knowingly, intentionally and fraudulently adulterate, or cause to be adulterated, such drugs, chemicals or medical preparations, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, be liable to a penalty not exceeding one hundred dollars, and in addition thereto, his name shall be stricken from the register.

Apothecaries may sell what. SEC. 8. Apothecaries registered as herein provided shall have the right to keep and sell, under such restrictions as herein provided, all medicines and poisons authorized by the National American or United States dispensatory and pharmacopœia as of recognized medicinal utility; *provided*, that nothing herein contained shall be construed so as to shield an apothecary or pharmacist who violates or in any wise abuses this trust for the legitimate and actual necessities of medicine, from the utmost rigor of the law relating to the sale of intoxicating liquors, and in addition thereto his name shall be stricken from the register.

Intoxicating liquors. SEC. 9. It shall be unlawful for any person, from and after the passage of this act, to retail any poisons enumerated in schedules "A" and "B," except as follows: *Schedule A*; arsenic, and its preparations, corrosive sublimate, white precipitate, red precipitate, biniiodide of mercury, cyanide of potassium, hydrocyanic acid, strychnia, and other poisonous vegetable alkaloids, and their salts, essential oil of bitter almonds, opium and its preparations, except paregoric and other preparations of opium containing less than two grains to the ounce; *Schedule B*, aconite, belladonna, colchicum, conium, nux vomica, henbane, savin, ergot, cotton root, cantharides, creosote, digitalis, and their pharmaceutical preparations, croton oil, chloroform, chloral hydrate, sulphate of zinc, mineral acids, carbolic acid and oxalic acid; without distinctly labeling the box, vessel or paper in which the said poison is contained, and also the outside wrapper or cover, with the name of the article, the word "poison," and the name and place of business of the seller. Nor shall it be lawful for any person to sell or deliver any poison enumerated in schedules "A" and "B" unless, upon due inquiry, it be found that the purchaser is aware of its poisonous character, and represents that it is to be used for a legitimate purpose. Nor shall it be lawful for any registered pharmacist to sell any poisons included in schedule "A" without, before delivering the same to

Poisons: how retailed.

Schedules.

the purchaser, causing an entry to be made, in a book kept for that purpose, stating the date of sale, the name and address of the purchaser, the name of the poison sold, the purpose for which it is represented by the purchaser to be required, and the name of the dispenser; such book to be always open for inspection by the proper authorities, and to be preserved for at least five years. The provisions of this section shall not apply to the dispensing of poisons, in not unusual quantities or doses, upon the prescriptions of practitioners of medicine. Nor shall it be lawful for any licensed or registered druggist or pharmacist to retail, or sell, or give away any alcoholic liquors or compounds as a beverage, and any violation of the provisions of this section shall make the owner or principal of said store or pharmacy liable to a fine of not less than twenty-five dollars, and not more than one hundred dollars, to be collected in the usual manner; and, in addition thereto, for repeated violations of this section his name shall be stricken from the register.

Alcoholic
liquors.

SEC. 10. Any itinerant vender of any drug, nostrum, ointment or appliance of any kind, intended for the treatment of diseases or injury, who shall, by writing or printing, or any other method, publicly profess to cure or treat diseases, or injury, or deformity, by any drug, nostrum, manipulation, or other expedient, shall pay a license of one hundred dollars per annum, to be paid in the manner for obtaining peddler's license.

Itinerant ven-
der of drugs:
license.

SEC. 11. Any person who shall procure, or attempt to procure, registration for himself or for another under this act, by making, or causing to be made, any false representations, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be liable to a penalty of not less than twenty-five nor more than one hundred dollars, and the name of the person so fraudulently registered shall be stricken from the register. Any person, not a registered pharmacist as provided for in this act, who shall conduct a store, pharmacy, or place for retailing, compounding or dispensing drugs, medicines or chemicals, for medicinal use, or for compounding or dispensing physicians' prescriptions, or who shall take, use or exhibit the title of registered pharmacist, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be liable to a penalty of not less than fifty dollars.

Penalty for
false represen-
tations.

SEC. 12. This act shall not apply to physicians putting up their own prescriptions, nor to the sale of proprietary medicines.

Prescriptions
and propri-
etary medicines.

[SEC. 13. Publication clause.]

SEC. 14. All acts or parts of acts in conflict with this act are hereby repealed.

Repealing
clause.

STATE BOARD OF HEALTH.

[Eighteenth General Assembly, Chapter 151.]

SECTION 1. The governor, with the approval of the executive council, shall appoint nine persons, one of whom shall be the attorney-general of the state (by virtue of his office), one a civil engineer, and seven physicians, who shall constitute a state board of health. The persons so appointed shall hold their offices for seven years: *provided*, that the terms of office of the seven physicians first appointed shall be so arranged by lot that the term of

one shall expire on the thirty-first day of January of each year; and the vacancies thus occasioned, as well as all other vacancies otherwise occurring, shall be filled by the governor, with the approval of the executive council.

Powers and duties.

SEC. 2. The state board of health shall have the general supervision of the interests of the health and life of the citizens of the state. They shall have charge of all matters pertaining to quarantine; they shall supervise a state registration of marriages, births and deaths, as hereinafter provided; they shall have authority to make such rules and regulations and such sanitary investigations as they may, from time to time, deem necessary for the preservation or improvement of public health; and it shall be the duty of all police officers, sheriffs, constables, and all other officers of the state to enforce such rules and regulations, so far as the efficiency and success of the board may depend upon their official co-operation.

Clerk of Court to keep registry of physicians and midwives, and of births, marriages and deaths.

Report.

Forms to be furnished.

Physicians and midwives to register and make report.

Penalty.

Report by parent or next of kin.

SEC. 3. The clerk of the district and circuit courts of each of the several counties in the state shall be required to keep separate books for the registration of the names and post office address of physicians and midwives, for births, for marriages, and for deaths, which record shall show the names, date of birth, death or marriage; the names of parents and sex of child, when a birth; and when a death, shall give the age, sex and cause of death, with the date of the record and the name of the person furnishing the information. Said books shall always be open for inspection without fee, and the clerks of said courts shall be required to render a full and complete report of all births, marriages and deaths to the secretary of the board of health, annually, on the first day of October of each year, and at such other times as the board may direct.

SEC. 4. It shall be the duty of the board of health to prepare such forms for the record of births, marriages and deaths as they may deem proper; the said forms to be furnished by the secretary of said board to the clerks of the district and circuit courts of the several counties, whose duty it shall be to furnish them to such persons as are herein required to make reports.

SEC. 5. It shall be the duty of all physicians and midwives in this state to register their names and post office address with the clerk of the district and circuit courts of the county where they reside, and said physicians and midwives shall be required, under penalty of ten dollars, to be recovered in any court of competent jurisdiction in the state at suit of the clerk of the courts, to report to the clerk of the courts, within thirty days from the date of their occurrence, all births and deaths which may come under their supervision, with a certificate of the cause of death, and such other facts as the board may require, and the blank forms furnished as hereinafter provided.

SEC. 6. When any birth or death shall take place, no physician or midwife being in attendance, the same shall be reported by the parent to the clerk of the district and circuit courts within thirty days from the date of its occurrence, and if a death, the supposed cause of death, or if there be no parent by the nearest of kin not a minor, or if none, by the resident householder, where the birth or death shall have occurred, under penalty provided in the preceding section of this act. Clerks of the district and circuit

courts shall annually, on the first day of October of each year, send ^{Clerk to report to secretary of board of health.} to the secretary of the state board of health a statement of all births and deaths recorded in their offices for the year preceding said date under a penalty of twenty-five dollars in case of failure.

SEC. 7. The coroners of the several counties shall report to the ^{Coroners to report to clerk} clerk of the courts, all cases of deaths which may come under their supervision, with the cause or mode of death, etc., as per form furnished, under penalty as provided in section five of this act.

SEC. 8. All amounts recovered under the penalties of this act ^{Penalties to go to special fund.} shall be appropriated to a special fund for carrying out the object of this law.

SEC. 9. The first meeting of the board shall be within twenty days after its appointment, and thereafter in May and November of each year, and at such other times as the board shall deem expedient. The November meeting shall be in the city of Des Moines; a majority of the members of the board shall constitute a quorum. They shall choose one of their number to be president and shall adopt rules and by-laws for their government, subject to the provisions of this act. ^{Meetings of board.}

SEC. 10. They shall elect a secretary who shall perform the ^{Secretary: compensation.} duties prescribed by the board and by this act. He shall receive a salary which shall be fixed by the board, not exceeding twelve hundred dollars per annum. He shall, with the other members of the board receive actual traveling and other necessary expenses incurred in the performance of official duties; but no other member of the board shall receive a salary. The president of the board shall quarterly certify the amount due the secretary, and on presentation of said certificate, the auditor of state shall draw his warrant on the state treasurer for the amount.

SEC. 11. It shall be the duty of the board of health to make a ^{Report.} biennial report, through their secretary or otherwise, in writing to the governor of the state on or before the first day of December of each year preceding that in which the general assembly meets; and such report shall include so much of the proceedings of the board, such information concerning vital statistics, such knowledge respecting diseases and such instruction on the subject of hygiene as may be thought useful by the board for dissemination among the people, with such suggestions as to the legislative action as they may deem necessary.

SEC. 12. The sum of five thousand dollars per annum, or so ^{Annual appro-} much thereof as may be necessary, is hereby appropriated to pay ^{pri-} the salary of the secretary, meet the contingent expenses of the office of the secretary and the expenses of the board and all costs of printing, which, together, shall not exceed the sum hereby appropriated. Said expenses shall be certified and paid in the ^{Secretary of State to provide room for meeting and office.} same manner as the salary of the secretary. The secretary of state shall provide rooms suitable for the meetings of the board and office room for the secretary of the board.

SEC. 13. The mayor and alderman of each incorporated city, ^{Local boards of health.} the mayor and council of any incorporated town or village, in the state, or the trustees of any township, shall have and exercise all the powers and perform all the duties of a board of health within

the limits of the cities, towns and townships of which they are officers.

Officers. SEC. 14. Every local board of health shall appoint a competent physician to the board, who shall be the health officer within its jurisdiction, and shall hold his office during the pleasure of the board. The clerks of the townships and the clerks and recorders of cities and towns shall be clerks of the local boards. The local boards shall also regulate all fees and charges of persons employed by them in the execution of the health laws and of their own regulations.

Fees. SEC. 15. It shall be the duty of the health physician of every incorporated town, and also the clerk of the local board of health in each city or incorporated town or village in the state, at least once a year to report to the state board of health their proceedings, and such other facts required, on blanks, and in accordance with instructions received from said state board. They shall also make special reports whenever required to do so by the state board of health.

Report to State Board. SEC. 16. Local boards of health shall make such regulations respecting nuisances, sources of filth, and cause of sickness within their jurisdiction, and on board any boats in their ports or harbors, as they shall judge necessary for the public health and safety; and if any person shall violate any such regulations, he shall forfeit a sum of not less than twenty-five dollars for every day during which he knowingly violates or disregards said rules and regulations, to be recovered before any justice of the peace or other court of competent jurisdiction.

Regulations. SEC. 17. The board of health of any city or incorporated town or village shall order the owner of any property, place or building, (at his own expense,) to remove any nuisance, source of filth or cause of sickness, found on private property, within twenty-four hours, or such other time as is deemed reasonable after notice served as hereinafter provided; or if the owner or occupant neglects to do so, he shall forfeit a sum not exceeding twenty dollars for every day during which he knowingly and wilfully permits such nuisance or cause of sickness to remain after the time prescribed for the removal thereof.

Penalty. SEC. 18. If the owner or occupant fails to comply with such order, the board may cause the nuisance, source of filth or cause of sickness to be removed, and all expenses incurred thereby shall be paid by the owner, occupant or other person who caused or permitted the same, if he has had actual notice from the board of health of the existence thereof, to be recovered by civil action in the name of the state before any court having jurisdiction.

Abatement of nuisance. SEC. 19. The board when satisfied, upon due examination, that any cellar, room, tenement, or building in its town, occupied as a dwelling place, has become, by reason of the number of occupants, or want of cleanliness, or other cause, unfit for such purpose, and a cause of nuisance or sickness to the occupants or the public, may issue a notice, in writing, to such occupants, or any of them, requiring the premises to be put in proper condition as to cleanliness, or, if they see fit, requiring the occupants to remove or quit the premises within such time as the board may deem reasonable. If the persons so notified, or any of them, neglect or refuse to comply

Name as to dwelling place.

with the terms of the notice, the board may cause the premises to be properly cleaned at the expense of the owners, or may remove the occupants forcibly and close up the premises, and the same shall not again be occupied as a dwelling place without permission, in writing, of the board.

SEC. 20. Whenever the board of health shall think it necessary ^{Forcible entry.} for the preservation of the lives or health of the inhabitants to enter a place, building or vessel in their township, for the purpose of examining into and destroying, removing or preventing any nuisance, source of filth, or cause of sickness, and shall be refused such entry, any member of the board may make complaint, under oath, to any justice of the peace of his county, whether such justice be a member of the board or not, stating the facts of the case so far as he has knowledge thereof. Such justice shall thereupon issue a warrant directed to the sheriff or any constable of the county, commanding him to take sufficient aid, and being accompanied by two or more members of said board of health between the hours of sunrise and sunset, repair to the place where such nuisance, source of filth, or cause of sickness complained of may be, and the same destroy, remove or prevent, under the direction of such members of the board of health.

SEC. 21. When any person coming from abroad, or residing ^{Care of infected person.} within any city, town, or township, within this state, shall be infected, or shall lately have been infected with small-pox or other sickness dangerous to the public health, the board of health of the city, town or township, where said person may be, shall make effectual provision in the manner in which they shall judge best for the safety of the inhabitants by removing such sick or infected person to a separate house, if it can be done without damage to his health, and by providing nurses and other assistance and supplies, which shall be charged to the person himself, his parents or other person who may be liable for his support, if able, otherwise, at the expense of the county to which he belongs.

SEC. 22. If any infected person cannot be removed without ^{same.} damage to his health, the board of health shall make provision for him as directed in the preceding section in the house in which he may be, and in such case they may cause the persons in the neighborhood to be removed and may take such other measures as may be deemed necessary for the safety of the inhabitants.

SEC. 23. Any justice of the peace on application under oath ^{Warrant for removal of infected person.} showing cause therefor by a local board or any member thereof, shall issue his warrant under his hand, directed to the sheriff or any constable of the county, requiring him under the direction of the board of health to remove any person infected with contagious diseases, or to take possession of condemned houses and lodgings, and to provide nurses and attendants and other necessities for the care, safety, and relief of the sick.

SEC. 24. Local boards of health shall meet for the transaction ^{Meeting of local boards.} of business on the first Monday of May and the first Monday in November of each year, and at any other time that the necessities of the health of their respective jurisdictions may demand, and the clerk of each board shall transmit his annual report to the secretary ^{Report of clerk.} of the state board of health within two weeks after the November meeting. Said report shall embrace a history of any epidemic

disease which may have prevailed within his district. The failure of the clerk of the board to prepare, or cause to be prepared, and forward such report as above specified, shall be considered a misdemeanor for which he shall be subject to a fine of not more than twenty-five dollars.

Repealing clause.

SEC. 25. All laws in conflict with this act are hereby repealed.

CHAPTER 9.

OF QUARTERLY BANK STATEMENTS.

*When, to whom made, and what to contain.
R. § 1636.*

SECTION 1570. All associations organized under the general incorporation laws of this state, for the purpose of transacting a banking business, buying or selling exchange, receiving deposits, discounting notes, etc., shall make a full, clear, and accurate statement of the condition of the association as hereinafter provided, which shall be verified by the oath of the president or vice-president, cashier or secretary, and two of the directors, which statement shall contain:

1. The amount of capital stock actually paid in, and then remaining as the capital of such association;
2. The amount of debts of every kind due to banks, bankers, or other persons, other than regular depositors;
3. The total amount due depositors, including sight and time deposits;
4. The amount subject to be drawn at sight then remaining on deposit with solvent banks or bankers of the country, specifying each city and town and the amount deposited in each and belonging to such association;
5. The amount of gold and silver coin and bullion belonging to such association at the time of making the statement;
6. The amount then on hand of bills of solvent specie-paying banks;
7. The amount of bills, bonds, notes, and other evidences of debt, discounted or purchased by such association, and then belonging to the same, specifying particularly the amount of suspended debts, the amount considered good, the amount considered doubtful, and the amount in suit or judgment;
8. The value of real or personal property held for the convenience of such association, specifying the amount of each;
9. The amount of the undivided profits, if any, then on hand;
10. The total amount of all liabilities to such associations on the part of the directors thereof; which statement shall be forthwith transmitted to the auditor of state, and be by him filed in his office.

Auditor of state may require additional reports.

SEC. 1571. The auditor of state shall, at any time he may see proper, make, or cause to be made, an examination of any association, as hereinafter provided, contemplated in this chapter, or he shall call upon any such association for a report of its state and

condition as hereinbefore provided, upon any given day which has passed, as often as four times a year, and which reports the auditor shall cause to be published for one day in some daily newspaper published in the county where such association shall be located, or if there be no such newspaper published in said county, then such report shall be published in some weekly newspaper printed in said county for one week; the expenses of such publication shall be paid by each institution.

SEC. 1572. If such auditor is satisfied from said examination or reports that any such institution is insolvent, he shall direct the attorney-general to commence the proper proceedings, to have a receiver appointed and said institution wound up, and the assets thereof ratably distributed among the creditors thereof, giving preference in payment to depositors.

SEC. 1573. Any wilful failure or neglect of the proper officers of such association to comply with the provisions of this chapter, shall be regarded as a forfeiture of all the rights and privileges of such association.

SEC. 1574. Any officer whose duty it is made to make statement and publication as aforesaid, who shall wilfully neglect, or refuse to do so shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not less than one hundred dollars nor more than one thousand dollars, or by imprisonment not less than three months nor more than three years in the penitentiary.

SEC. 1575. The provisions of sections fifteen hundred and seventy-three and fifteen hundred and seventy-four, of this chapter, shall not apply to or be enforced against any such banking institution, or the officers thereof, who heretofore have been incorporated and come under the provisions of this chapter; *provided*, that on or before the first day of September, 1873, any such institution shall have shown by a statement of its condition to the satisfaction of the auditor of the state, that it is now in a sound condition. In no case shall more than four statements in one year be required.

SEC. 1576. No association shall be organized under the provisions of this chapter with a less amount of paid up capital than fifty thousand dollars, except in cities or towns having a population not exceeding three thousand, where such association may be organized with a paid up capital of not less than twenty-five thousand dollars. But no such association shall have the right to commence business until its officers elect, or its stockholders, shall have furnished to the auditor of state a sworn statement of the paid up capital, and when the auditor of state is satisfied as to the fact, he shall issue to such association a certificate authorizing such association to commence business, a copy of which shall be published as provided in section fifteen hundred and seventy-one of this chapter.

Insolvent: receiver appointed.

Forfeiture.
R. § 1638.

Failure to report: officer
criminally liable.
R. § 1639.

Existing associations: how affected: four statements required each year.

Amount of capital required.

FRAUDULENT BANKING.

[Eighteenth General Assembly, Chapter 158.]

SEC. 1. No bank, banking house, exchange broker, deposit office, or firm, company, corporation, or party engaged in the banking, broker, exchange, or deposit business, shall accept or receive on deposit, with or without interest, any moneys, bank bills, or notes, or United States treasury notes, or currency or other notes, bills or drafts circulating as money or currency, when such bank, banking house, exchange-broker, or deposit office, firm, or party, is insolvent.

Penalty. **SEC. 2.** If any such bank, banking house, exchange-broker or deposit office, firm, company, corporation, or party, shall receive or accept on deposit any such deposits as aforesaid, when insolvent, any officer, director, cashier, manager, member, party, or managing party thereof, knowing of such insolvency, who shall knowingly receive or accept, be accessory, or permit or connive at the receiving or accepting on deposit therein, or thereby, any such deposits as aforesaid, shall be guilty of a felony, and upon conviction, shall be punished by imprisonment in the state prison for a term not to exceed ten years, or by imprisonment in the county jail not to exceed one year, or both fine and imprisonment, the fine not to exceed ten thousand dollars.

TITLE XII.

OF EDUCATION.

CHAPTER 1.

OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION.

SECTION 1577. The superintendent of public instruction shall Duties.
be charged with the general supervision of all the county superin- C. '51, § 1089.
tendents and all the common schools of the state. He may meet 10 G. A. ch. 52,
county superintendents in convention at such points in the state 12 G. A. ch. 102,
as he may deem most suitable for the purpose, and by explanation
and discussion endeavor to secure a more uniform and efficient
administration of school laws. He shall attend teachers' institutes
in the several counties of the state, as far as may be consistent
with the discharge of other duties imposed by law, and assist by
lecture or otherwise in their instruction and management. He
shall render a written opinion to any school officer asking it, touch-
ing the exposition or administration of any school law, and shall
determine all cases appealed from the decision of county superin-
tendents.

SEC. 1578. An office shall be provided for him at the seat of Office: to file
government, in which he shall file all papers, reports, and public papers and
documents, transmitted to him by the county superintendents each documents. C. '51, § 1078.
year, separately, and hold the same in readiness to be exhibited to 10 G. A. ch. 52,
the governor, or to a committee of either house of the general as- 12 G. A. ch. 102,
sembly, at any time when required; and he shall keep a fair record
of all matters pertaining to his office.

SEC. 1579. After the adjournment of the eighteenth general Publication of
assembly and every four years thereafter, if deemed necessary, he school laws.
may cause to be printed and bound in cloth the school laws, and C. '51, § 1083.
all amendments thereto, with such notes, rulings, forms and deci- 1085.
sions as may seem of value to said school officers in the proper 12 G. A. ch. 102
discharge of their duty. Appropriate reference shall be made to 12 G. A. ch. 102,
the previous law that has been amended or changed so as clearly
to indicate the effect of such amendments or changes. He shall
send to each county superintendent a number of copies sufficient
to supply each school district in his county with one copy of such
school laws, with decisions. He shall also cause to be printed and
bound in paper covers the school laws with notes and with forms
necessary to be used in carrying out the school laws. The distri-
bution of these laws, in paper covers, shall be made through the
county auditor under the direction of the secretary and auditor

of state, who shall determine the price, covering the cost to the state, at which they shall be sold to any party, provided that he shall furnish each of the members of the board of directors with one copy of the laws bound in paper covers, which shall be turned over to their successors in office.

[The original section repealed and the foregoing, and § 2 following, substituted therefor; 18th G. A., ch. 150.]

SEC. 2. After such sessions of the general assembly as the state superintendent shall not deem it necessary to publish the laws, as provided for in section one of this act, he shall cause to be published in pamphlet form all the amendments to the school laws passed by such general assembly, in sufficient number to supply each of the county superintendents and school officers of the state with one copy free of charge, which said amendments shall be sent to the several county superintendents for distribution.

[Sec. 1580, providing for additional compensation for indexing and distributing school laws, repealed; 17th G. A., ch. 102.]

SEC. 1581. He may, if he deem it expedient, subscribe for a sufficient number of copies of the Iowa School Journal, or of such other educational journal published in the state as he may select to furnish each county superintendent with one copy, and his certificate of having thus subscribed, shall be authority for the auditor of state to issue his warrant for the amount of said subscriptions; *provided*, he shall cause to be inserted in the journal he may so select a correct copy of any decision he may deem it necessary to make for the efficient carrying out of the school law.

[The words "of copies" in the second line, as they stand in the original, are omitted in the printed code.]

SEC. 1582. He shall, annually, on the first day of January, report to the auditor of state the number of persons in each county between the ages of five and twenty-one years.

SEC. 1583. He shall make a report to the general assembly at each regular session thereof, which shall embrace, first, a statement of the condition of the common schools of the state; the number of district townships and sub-districts therein; the number of teachers; the number of schools; the number of school-houses and the value thereof; the number of persons between five and twenty-one years of age; the number of scholars in each county that have attended school the previous year, as returned by the several county superintendents; the number of books in the district libraries; and the value of all apparatus in the schools, and such other statistical information as he may deem important. Second, such plans as he may have matured for the more perfect organization and efficiency of common schools. He shall cause one thousand copies of his report to be printed, and shall present it to the general assembly on the second day of its session.

SEC. 1584. Whenever reasonable assurance shall be given by the county superintendent of any county to the superintendent of public instruction, that not less than twenty teachers desire to assemble for the purpose of holding a teachers' institute in said county, to remain in session not less than six working days, he shall appoint the time and place of said meeting, and give due notice thereof to the county superintendent; and for the purpose

May subscribe
for Iowa School
Journal.
10 G. A. ch. 52,
§ 7.

Report to audi-
tor.
Same, § 9.

Report to each
regular session
of general as-
sembly.
C. '51, § 1086.
Same, § 10.

May appoint
teachers' insti-
tutes; ap-
propriation for.
Same, § 11.

of defraying the expenses of said institute there is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, a sum not exceeding fifty dollars annually for one such institute in each county held as aforesaid, which the said superintendent shall immediately transmit to the county superintendent in whose county the institute shall be held, who shall therewith defray the necessary expenses of the institute, and, if any balance remains, he shall pay the same into the county treasury and the same shall be credited to the teachers' fund.

CHAPTER 2.

OF THE STATE UNIVERSITY.

SECTION 1585. The objects of the state university, established by the constitution at Iowa City, shall be to provide the best and most efficient means of imparting to young men and women on equal terms, a liberal education and thorough knowledge of the different branches of literature, the arts and sciences, with their varied applications. The university, so far as practicable, shall begin the courses of study in its collegiate and scientific departments, at the points where the same are completed in high schools; and no student shall be admitted who has not previously completed the elementary studies, in such branches as are taught in the common schools throughout the state.

The state university is not a corporation and cannot be sued: *Weary v. The State University*, 42-335.

Objects of:
course of study
in.
R. 2 1926.

10 G. A. ch. 59.

13 G. A. ch. 57.

§ 1.

SEC. 1586. The university shall never be under the exclusive control of any religious denomination whatever.

Control of.
R. 2 1930.
C. 51, § 1020.
10 G. A. ch. 59.
§ 6.
13 G. A. ch. 57.
§ 1.

SEC. 1587. The university shall be governed by a board of regents, consisting of the governor of the state, who shall be president of the board by virtue of his office, the superintendent of public instruction, who shall be a member by virtue of his office, and the president of the university, who shall also be a member by virtue of his office, together with one person from each congressional district of the state, who shall be elected by the general assembly.

Governed by
board of re-
gents: who
compose.
10 G. A. ch. 59,
§ 3.
13 G. A. ch. 57,
§ 3.

[As amended so as to make the superintendent of public instruction a member of the board; 16th G. A., ch. 147.]

SEC. 1588. The members of said board shall be divided into three classes, consisting of two each. The number in each class, as the congressional districts of the state increase, shall be kept as nearly equal as practicable, and the members in each class shall hold office for the term of six years from their election and until their successors are elected and qualified. The general assembly shall elect members every two years, as the terms of office of the respective classes expire. The board of regents shall fill all vacancies occurring therein, except when the legislature is in session,

Members
classed.
10 G. A. ch. 59,
§ 3, 4, 15.
13 G. A. ch. 57,
§ 4.

and the persons so appointed shall hold their offices until the next session of the general assembly.

SEC. 1589. The university shall include a collegiate, scientific, normal, law, and such other departments, with such courses of instruction and elective studies as the board of regents may determine; and the board shall have authority to confer such degrees, and grant such diplomas and other marks of distinction as are usually conferred and granted by other universities.

SEC. 1590. The meetings of the board of regents shall be held at such times as the board may appoint. The president of the board may call special meetings when he deems it expedient, or special meetings may be called by any three members of the board.

SEC. 1591. An executive committee, consisting of three competent and responsible persons, shall be appointed by the board of regents, who shall audit all claims, and whose chairman shall draw all orders for such audited claims on the treasurer, but before payment such orders shall be countersigned by the secretary. Said committee shall keep a specific and complete record of all matters involving the expenditure of money, which record shall be submitted to the board of regents at each regular meeting of the same.

SEC. 1592. The board of regents shall elect a secretary, who shall hold his office at the pleasure of the board. He shall record all the proceedings of the board of regents, and carefully preserve all its books and papers. His books shall exhibit what parts of the university lands have been sold, when the same were sold and at what price, and to whom, on what terms, what portion of the purchase money has been paid, and when paid, on each sale, how much is due on each sale, by whom and how secured, and when payable, what lands remain unsold, where situated, and their appraised value, if appraised, or their estimated value, if not appraised. His books shall also show how the permanent fund of the university has been invested, the amount of each kind of stocks, if any, with the date thereof and when due, and the interest thereon and when and where payable, the amount of each loan, if any, and when made, and payable to whom, and how secured, and at what rate of interest, and when and where payable. When any further sales of lands, or further instruments shall be made, the secretary shall enter the same upon his books as above set forth. The secretary shall countersign and register all orders for money on the treasurer, and the treasurer shall not pay an order on him for money unless the same be countersigned by the secretary.

SEC. 1593. The board of regents shall elect a treasurer, who shall hold his office at the pleasure of the board. He shall keep a true and faithful account of all moneys received and paid out by him, and before entering upon the duties of his office he shall take and subscribe an oath that he will faithfully perform the duties of treasurer; and he shall also give a bond in the penalty of not less than fifty thousand dollars, conditioned for the faithful discharge of his duties as treasurer, and that he will at all times keep and render a true account of moneys received by him as such treasurer, and of the disposition he has made of the same, and that he will at all times be ready to discharge himself

of the trust, and to pay over when required ; which bond shall have two or more good sureties, and shall be approved as to its form and the sufficiency of its sureties by the board of regents, and also the auditor and secretary of state, and shall be filed in the office of the latter.

[The word "sureties," in the thirteenth line, as in the original, is "securities" in the printed code.]

SEC. 1594. The treasurer of the university shall have a set of books, in which he shall keep an accurate account of all transactions relative to the sale and disposition of university lands, and the management of the fund arising therefrom ; which books shall exhibit what parts and portions of land have been sold, at what prices and to whom, and how the proceeds have been invested, and on what securities, and what lands still remain unsold, where situated, and of what value respectively.

SEC. 1595. The treasurer shall, on the first day of June and December of each year, notify in writing each person in default of payment of either principal or interest of funds loaned by or due to the university, and shall cause suit to be commenced against such delinquents, when, in his judgment, the best interest of the institution requires it.

SEC. 1596. The board of regents shall enact laws for the government of the university, and shall appoint a president and the requisite number of professors and tutors, together with such other officers as they may deem expedient, and shall determine the salaries of such officers, the compensation of the secretary and treasurer, and the amount of fees to be paid for tuition. They shall remove any officer connected with the university, when, in their judgment, the good of the institution requires it.

SEC. 1597. The board of regents is authorized to expend such portion of the income of the university fund as it may deem expedient, in the purchase of apparatus, library, and a cabinet of natural history, in providing suitable means to keep and preserve the same, and in procuring all other necessary facilities for giving instruction.

SEC. 1598. All specimens of natural history and geological and mineralogical specimens, which are or hereafter may be collected by the state geologist of Iowa, or by any others appointed by the state to investigate its natural history and physical resources, shall belong to and be the property of the state university, and shall form a part of its cabinet of natural history, which shall be under the charge of the professor of that department.

SEC. 1599. No sales of lands belonging to the university shall hereafter take place unless the same shall have been decided upon at a regular meeting of the board of regents, or at one called for that particular purpose, and then only in the manner, upon the notice, and on the terms which the board shall prescribe; and no member of the board shall be either directly or indirectly interested in any purchase of such lands upon sale, nor shall the secretary or treasurer be so interested. It shall be lawful for the board to invest any portion of the permanent endowment fund, not otherwise invested, as well as any surplus income which is not immediately required for other purposes, in United States stock,

Books of: what accounts kept by treasurer.

R. § 1937.

10 G. A. ch. 59.

§ 9, 16.

13 G. A. ch. 87.

§ 10.

Notify persons in default owing university.

10 G. A. ch. 59.

§ 9.

13 G. A. ch. 87.

§ 11.

13 G. A. ch. 87.

§ 12.

Regents to appoint a president and professors and fix compensation of officers.

R. § 1934.

10 G. A. ch. 59.

§ 11.

13 G. A. ch. 87.

§ 12.

13 G. A. ch. 87.

§ 13.

13 G. A. ch. 87.

§ 14.

13 G. A. ch. 87.

§ 15.

Same ch's §§ 13.

13 G. A. ch. 87.

§ 16.

13 G. A. ch. 87.

§ 17.

13 G. A. ch. 87.

§ 18.

13 G. A. ch. 87.

§ 19.

13 G. A. ch. 87.

§ 20.

13 G. A. ch. 87.

§ 21.

13 G. A. ch. 87.

§ 22.

13 G. A. ch. 87.

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13 G. A. ch. 87.

§ 24.

13 G. A. ch. 87.

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13 G. A. ch. 87.

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13 G. A. ch. 87.

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13 G. A. ch. 87.

§ 28.

13 G. A. ch. 87.

§ 29.

13 G. A. ch. 87.

§ 30.

13 G. A. ch. 87.

§ 31.

13 G. A. ch. 87.

§ 32.

13 G. A. ch. 87.

§ 33.

13 G. A. ch. 87.

§ 34.

13 G. A. ch. 87.

§ 35.

13 G. A. ch. 87.

§ 36.

13 G. A. ch. 87.

§ 37.

13 G. A. ch. 87.

§ 38.

13 G. A. ch. 87.

§ 39.

13 G. A. ch. 87.

§ 40.

13 G. A. ch. 87.

§ 41.

13 G. A. ch. 87.

§ 42.

13 G. A. ch. 87.

§ 43.

13 G. A. ch. 87.

§ 44.

13 G. A. ch. 87.

§ 45.

13 G. A. ch. 87.

§ 46.

13 G. A. ch. 87.

§ 47.

13 G. A. ch. 87.

§ 48.

13 G. A. ch. 87.

§ 49.

13 G. A. ch. 87.

§ 50.

13 G. A. ch. 87.

§ 51.

13 G. A. ch. 87.

§ 52.

13 G. A. ch. 87.

§ 53.

13 G. A. ch. 87.

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13 G. A. ch. 87.

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13 G. A. ch. 87.

§ 108.

13 G. A. ch. 87.

§ 109.

13 G. A. ch. 87.

§ 110.

13 G. A. ch. 87.

§ 111.

13 G. A. ch. 87.

§ 112.

13 G. A. ch. 87.

§ 113.

Cabinet of natural history.

R. § 1931.

10 G. A. ch. 59.

§ 9, 16.

13 G. A. ch. 87.

§ 10.

13 G. A. ch. 87.

§ 11.

13 G. A. ch. 87.

§ 12.

13 G. A. ch. 87.

§ 13.

13 G. A. ch. 87.

§ 14.

13 G. A. ch. 87.

Purchase apparatus, library, etc.

R. § 1935.

13 G. A. ch. 87.

§ 15.

13 G. A. ch. 87.

§ 16.

13 G. A. ch. 87.

§ 17.

13 G. A. ch. 87.

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13 G. A. ch. 87.

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13 G. A. ch. 87.

§ 26.

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or stocks of the state of Iowa, or by note and mortgage on unencumbered real estate, the value of which, after deducting the value of all perishable improvements thereon, shall be double the amount of the sum loaned, and hold the same for the university, either as a permanent fund, or as an income to defray current expenses, as said board of regents may deem expedient. It shall not be lawful for the board to use any portion of the permanent fund for the ordinary expenses of the institution.

Permanent
fund.

President to re-
port to regents.
Same, § 16.

SEC. 1600. The president of the university shall make a report on the fifteenth day of September preceding the meeting of the general assembly, to the board of regents, which shall exhibit the condition and progress of the institution in its several departments, the different courses of study pursued therein, the branches taught, the means and methods of instruction adopted, the number of students, with their names, classes, and residences, and such other matters as he may deem proper to communicate.

Regents report
to superintend-
ent of public
instruction.
Same chs., §§ 17.

SEC. 1601. The board of regents shall, on the first day of October preceding each regular meeting of the general assembly, make a report to the superintendent of public instruction, which report, with that of the president of the university, shall be embodied in the said superintendent's report to the general assembly. The report of the board of regents shall contain the number of professors, tutors, and other officers, with the compensation of each, the condition of the university fund, and the income received therefrom, the amount of expenditures, and the items thereof, with such other information and recommendations as they may deem expedient to lay before the general assembly.

Compensation
of.
10 G. A. ch. 59,
§ 5.
13 G. A. ch. 87,
§ 18.

SEC. 1602. The regents shall receive no compensation except for mileage in traveling to and from the meetings of the board, which shall be at the same rate, and computed in the same manner, as the mileage allowed to members of the general assembly. The auditor of state is hereby authorized to audit and allow the claims for such attendance, for not more than three meetings annually.

[Modified as to compensation of regents by 17th G. A., ch. 92, inserted following § 3826.]

Member of gen-
eral assembly
not eligible.

SEC. 1603. No member of the general assembly shall be eligible to the office of regent during the term for which he was so elected.

[Seventeenth General Assembly, Chapter 76.]

\$20,000 endow-
ment.

SEC 1. There *be and* is hereby appropriated out of any money in the state treasury, not otherwise appropriated, the sum of twenty thousand dollars annually to the state university as an endowment fund for said institution, to be paid in installments of five thousand dollars each; the first installment of five thousand dollars to be paid on the first day of July, one thousand eight hundred and seventy-eight, and the same sum quarterly thereafter.

[Sec. 2. makes a temporary appropriation.]

Money to be
drawn on or-
der of Execu-
tive commit-
tee.

SEC. 3. The money hereby appropriated shall be drawn from the state treasury by the treasurer of said state university, on the order of the executive committee appointed by the board of regents of said university, countersigned by the secretary thereof under the university seal.

[Seventeenth General Assembly, Chapter 115.]

SEC. 1. After the first day of July, 1879, no part of the funds belonging to or appropriated for the state university shall be used for the support of the preparatory or non-collegiate course of studies heretofore taught in said university. Funds shall not be used for preparatory department.

IOWA WEATHER SERVICE.

[Seventeenth General Assembly, Chapter 45.]

SECTION 1. There *be and* hereby is established, at Iowa City, a central station for the Iowa weather service, with Gustavus Hinrichs as director thereof; and in case of his death or disability, his successor shall be appointed by the governor. Central station at Iowa City. Gustavus Hinrichs, director.

SEC. 2. The duties of said director shall be to establish volunteer weather stations throughout the state, and supervise the same, to receive reports therefrom, and reduce the same to tabular form, and to report the same quarterly to the state printer, for publication, in the form of the "Iowa Weather Report." Duties of director.

SEC. 3. The state printer *be [is]* authorized to print two thousand copies of the said Iowa weather report quarterly, one thousand copies of which shall be for distribution by the said director, and one thousand copies delivered to the secretary of state, to be by him distributed in the same manner as other state documents. Report to be printed and distributed.

SEC. 4. There is hereby appropriated the sum of one thousand dollars annually, or so much thereof as may be necessary, for the purpose of meeting the actual expenses in carrying out the provisions of this measure, but no part of said sum shall be used in payment of salaries to any officer or officers, except for clerk hire, and only upon the order of the said director. Annual appropriation.

CHAPTER 3.

OF THE STATE AGRICULTURAL COLLEGE AND FARM.

SECTION 1604. The lands, rights, powers, and privileges, granted to and conferred upon the state of Iowa by the act of congress entitled, "An act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts," approved July 2d, 1862, are hereby accepted by the state of Iowa, upon the terms, conditions, and restrictions contained in said act, and there is hereby established an agricultural college and model farm, to be connected with the entire agricultural and mechanical interests of the state; the said college and farm to be under the control and management of a board of five trustees, no two of whom shall be elected from the same congressional district. Controlled by board of five trustees. R. § 1714. Ex. S. 9 G. A. ch. 26, § 1. 11 G. A. ch. 47. § 1.

SEC. 1605. The present board of trustees shall continue in office until the first day of May, A. D. 1874, and the general assem-

Board, when
and how
elected: who
ineligible.
11 G. A. ch. 47.
§ 2.

bly at their regular session in said year, shall elect three trustees to serve for four years, and two trustees to serve for two years, from the first day of May, A. D. 1874; and the general assembly at each regular session thereafter shall elect the number of trustees which may be necessary to keep the board full. Any vacancies in said board caused by death, removal from the district or state, resignation, or failure to qualify within sixty days after election, may be filled by appointment by the governor; *provided*, that neither the president nor any other officer or employe of the college and farm, nor any member of the general assembly, shall be eligible as such trustee.

Power.

Elect chair-
man.

SEC. 1606. The board of trustees shall have power:

1. To elect a chairman from their own number, a president of the college and farm, a secretary, a treasurer, professors and other teachers, superintendents of departments, a steward, a librarian and such other officers as may be required for the transaction of the business of the board; also to fix the salaries of officers and prescribe their duties; and to appoint substitutes who shall discharge the duties of such officers during their temporary absence;

Manage prop-
erty.

2. To manage and control all the property of the college and farm, whether real or personal;

Make rules.

3. To make all rules and regulations for the government of the college and farm;

Arrange cour-
ses of study.

4. To establish rules regulating the number of hours which shall be devoted to manual labour, and to fix the compensation therefor; *provided*, no student shall be exempt from labor except in cases of sickness or other infirmity, or where students from the advanced classes may be employed as teachers;

Grant diplo-
mas.

14 G. A. ch. 62.

5. To arrange courses of study and practice, and to establish such professorships as they may deem best to carry into effect the provisions of this chapter; also to prescribe conditions of admission to the college;

Remove offi-
cers.

6. To grant diplomas, on the recommendation of the faculty, to any student who has completed either of the industrial courses prescribed by said board, or an equivalent thereof;

Direct expend-
itures.

7. To remove any officer by a majority vote of all the members of the board of trustees;

Keep record of
proceedings.

8. To direct the expenditure of all appropriations which the general assembly shall from time to time make to said college and farm, and the income arising from the congressional grant, and from all other sources;

9. To keep a full and complete record of their proceedings, and to do such other acts as are found necessary to carry out the intent and meaning of this chapter;

[As amended, omitting the clause in subdivision 4, fixing the lowest limit of the hours of labor; 16th G. A., ch. 119.]

Quorum.

SEC. 1607. A majority of the trustees shall be a quorum for the transaction of business.

Compensation.

SEC. 1608. The trustees shall receive as their compensation five dollars a day for each and every day actually employed in the discharge of their duties, and five cents per mile for each and every mile actually traveled on such business; *provided*, that no

member shall receive compensation for more than thirty days in each year.

[Modified as to compensation of trustees by 17th G. A., ch. 92, inserted following § 3826.]

[Fifteenth General Assembly, Chapter 7.]

SEC. 1. The auditor of state is hereby authorized to audit and allow the claims of the board of trustees from and after the first day of September, 1873, in accordance with section sixteen hundred and eight of the code of 1873.

SEC. 1609. The annual meetings of the board of trustees shall be held at the agricultural college on the second Wednesday of November.

SEC. 1610. The college year shall begin on Thursday after the second Wednesday in November of each year, and end on the second Wednesday of November of the following year. The biennial report of the board of trustees shall be filed in the office of the governor, not later than the first day of December preceding the regular meeting of the general assembly.

[The last sentence of the original, as to publication of the report, is omitted as repealed by 16th G. A., ch. 159, inserted following § 132.]

SEC. 1611. The president of the college and farm shall control, manage, and direct the affairs of the college and farm herein established, subject to such rules as may be prescribed by the board of trustees, and shall report to said board at their annual meeting in November, and at such other times as they shall direct, all his acts as such president, and the condition of the several departments of the college and farm, together with his recommendations for the future management thereof.

SEC. 1612. The secretary shall keep the documents and record of the proceedings of the board of trustees, and conduct their official correspondence. All acts of the board of trustees as to the management, disposition, or use of the lands, funds, or other property of the institution shall be entered in the record of its proceedings, and said record shall show how each member voted on each proposition. He shall also make the biennial report of the board to the general assembly. Upon the election of any person to an office under said board, he shall give notice thereof to the secretary of state. He shall also keep an account with the treasurer, charging him with all money paid to him from any source, and crediting him with the amounts paid out by him upon the order of the board of audit, which account shall be balanced monthly.

SEC. 1613. The president and secretary shall constitute a board of audit, who shall, under the rules of the board of trustees, examine all bills presented for payment, and no bills shall be paid without their joint endorsement thereon; *provided*, that no bill shall be so audited for whose payment the board of trustees has not made appropriation; also, the said board of audit shall examine the treasurer's books and vouchers monthly, and at such other times and so often as they shall deem necessary. All the proceedings as contemplated in this section shall be reported by the secretary of the board of trustees at each meeting thereof.

SEC. 1614. The treasurer shall receive and keep all notes and

Auditor to
allow the claims of
the first audit pay of
trustees.

Annual meet-
ings of.

College year:
report of trus-
tees to gov-
ernor.

Power and duty
of president.

Of secretary.

President and
secretary com-
pose board of
audit.

Treasurer to other evidence of indebtedness, contracts, and all moneys arising from the income of the congressional grant, from the appropriations of the general assembly, from the sales of the products of the farm, from the payments of students, and from all other sources, and shall pay out the same upon bills duly audited as above prescribed, and he shall retain such bills with the receipt for their payment as his vouchers; but no bill shall be paid for which appropriation had not been made by the board of trustees. He shall

Pay audited bills. keep an accurate account of the revenue and expenditures of said college and farm from all sources, and in such manner that the receipts and disbursements of each and every one of the several departments thereof shall be apparent at all times, and the gains or losses in such departments shall be carefully set forth; and he shall report to the board of trustees at their annual meeting in November, and at such other times as they shall direct. He shall also execute duplicate receipts of all money received by him, specifying the source from which received, and the fund to which it belongs, one of which must be filed with the secretary, and no receipt for money paid him shall be valid unless the duplicate is so filed. The treasurer shall be elected annually, and give a bond every year in double the highest amount of money likely to be in his hands at any one time, with such sureties as the executive council shall prescribe, and said bond shall be filed in the office of secretary of state, and the treasurer may appoint a deputy who shall reside at the college, and the board of trustees shall fix the compensation to be paid to such deputy, and the treasurer shall be responsible on his official bond for all acts done by such deputy.

Keep accounts.

Elected annually: to give bond: may appoint deputy.

President and secretary: oath of treasurer.

Board of trustees may lease lands.

Lessee may purchase at expiration of lease.

Forfeiture of lease.

Board may renew lease at eight per cent. interest.

other evidence of indebtedness, contracts, and all moneys arising from the income of the congressional grant, from the appropriations of the general assembly, from the sales of the products of the farm, from the payments of students, and from all other sources, and shall pay out the same upon bills duly audited as above prescribed, and he shall retain such bills with the receipt for their payment as his vouchers; but no bill shall be paid for which appropriation had not been made by the board of trustees. He shall keep an accurate account of the revenue and expenditures of said college and farm from all sources, and in such manner that the receipts and disbursements of each and every one of the several departments thereof shall be apparent at all times, and the gains or losses in such departments shall be carefully set forth; and he shall report to the board of trustees at their annual meeting in November, and at such other times as they shall direct. He shall also execute duplicate receipts of all money received by him, specifying the source from which received, and the fund to which it belongs, one of which must be filed with the secretary, and no receipt for money paid him shall be valid unless the duplicate is so filed. The treasurer shall be elected annually, and give a bond every year in double the highest amount of money likely to be in his hands at any one time, with such sureties as the executive council shall prescribe, and said bond shall be filed in the office of secretary of state, and the treasurer may appoint a deputy who shall reside at the college, and the board of trustees shall fix the compensation to be paid to such deputy, and the treasurer shall be responsible on his official bond for all acts done by such deputy.

SEC. 1615. The president and secretary shall have their respective offices at the college, and they, with the treasurer, shall take and prescribe the oath provided in section one hundred and twenty-six, chapter nine, title two of this code.

[Sec. 1616 repealed by act next following.]

[Fifteenth General Assembly, Chapter 71.]

SEC. 1. The board of trustees of the Iowa state agricultural college and farm are hereby authorized to lease the land granted to the state of Iowa by an act of Congress entitled, "An act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts," approved July 2d, 1862, in amount not exceeding one hundred and sixty acres to any one person, for a term not exceeding ten years, the lessee to pay eight per cent. per annum in advance upon the price of said land, which is hereby declared to be not less than fifty per cent. additional to the price at which each piece of said land, respectively, was appraised by the board of trustees in the year 1865; and the said lessee shall have the privilege of purchasing said land at the expiration of the lease at the price aforesaid. The lessee failing to pay the interest upon said lease, within sixty days from the time the same becomes due, shall forfeit his lease, together with the interest paid thereon, and the improvements made on said land.

SEC. 2. The said board of trustees are also authorized to renew leases heretofore made, for a term not exceeding ten years from the date of such renewal, the rate of interest to be eight per

cent., and when leases are so renewed the lands shall be subject Same to be
to assessment for taxation at the end of ten years from the date of subject to taxa-
tion.
the original lease. The board of trustees shall cause to be certi- Board to certify
fied to the auditors of the several counties, in which said lands are lists.
situated, a list of said land which may be subject to taxation as
herein provided; *provided*, that the releasing of this land shall be Secretary to do
done by the secretary of the said college without extra compen- releasing.
sation.

SEC. 3. Section sixteen hundred and sixteen of the code of § 1616 of code
1873, and all acts and parts of acts conflicting with the provisions repealed.
of this act are hereby repealed.

SEC. 1617. The moneys arising from the sale of said lands Money arising
shall be paid into the state treasury, and shall be invested by the from sale of
state treasurer subject to the approval of the executive council, in lands to be paid
stocks of the United States, or of the states, or some other safe to state treas-
stocks, yielding not less than five per centum on the par value of
said stocks as directed by the act of congress granting said lands,
and the money arising from the interest on said stocks, on the de-
ferred payments, and on the leases of said lands, as rental thereof,
shall be paid over to the board of trustees, and may be loaned by
said board of trustees on good and sufficient security when not
needed to defray such expenses of the college, as said moneys are
legally applicable to.

[A substitute for the original section; 16th G. A., ch. 91.]

SEC. 1618. The trustees are hereby endowed with all the nec- Agents ap-
essary authority to appoint agents, or do any other acts neces- pointed : to
sary to carry out the provisions of the three preceding sections.
But no such agent shall be appointed with authority to receive any give bond.
money until he has executed a good and sufficient bond to be ap-
proved by the trustees in a sum double the amount he will be
likely to receive. And every such agent shall make a monthly
statement under oath to the college treasurer of the amount re-
ceived by him, and transmit therewith all funds shown to be in
his hands.

SEC. 1619. Tuition in the college herein established shall be Tuition free:
forever free to pupils from this state over sixteen years of age, who prior right of
have been residents of the state six months previous to their counties.
admission. Each county in this state shall have a prior right to
tuition for three scholars from such county; the remainder equal to
the capacity of the college shall be by the trustees distributed
among the counties in proportion to the population, subject to the
above rule. Transient scholars otherwise qualified may at all
times receive tuition.

SEC. 1620. No person shall open, maintain, or conduct any Sale of liquors
shop or other place for the sale of wine, beer, or spirituous liquors, or wine and
or sell the same at any place within a distance of three miles from beer prohibi-
the agricultural college and farm; *provided*, that the same may be ted.
sold for sacramental, mechanical, medical, or culinary purposes;
and any person violating the provisions of this section shall be Penalty.
punished, on conviction by any court of competent jurisdiction, by
a fine not exceeding fifty dollars for each offense, or by imprison-
ment in the county jail for a term not exceeding thirty days, or by
both such fine and imprisonment.

Branches of study.

SEC. 1621. The course of instruction and practice in said college shall include the following branches: Natural philosophy, chemistry, botany, horticulture, fruit growing, forestry, animal and vegetable anatomy, geology, mineralogy, meteorology, entomology, zoology, the veterinary art, plane mensuration, leveling, surveying, book keeping, and such mechanic arts as are directly connected with agriculture; also, such other studies as the trustees may from time to time prescribe not inconsistent with the purposes of this chapter.

Money cannot be diverted from appropriate fund.

SEC. 1622. No money shall be diverted from the fund to which it belongs, or used for any purpose other than is provided by law, and any trustee, officer, or employe of said institution who may, by vote, direction, or act, violate the provisions of this section, shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the penitentiary or county jail not less than six months.

Penalty.

CHAPTER 4.

OF THE SOLDIERS' ORPHANS' HOMES.

SECTION 1623. The board of trustees of the Iowa soldiers' orphans' homes shall consist of three persons from the state at large, who shall be appointed by the general assembly for two years and until their successors are elected and qualified.

[As amended, 16 G. A., ch. 94, § 10.]

Trustees: how appointed.
11 G. A. ch. 92.
14 G. A. ch. 75.

SEC. 1624. Said board shall govern and manage said homes,

Make rules and manage affairs of.
11 G. A. ch. 92.
14 G. A. ch. 75.

and shall have power to enact laws and rules for the regulation of all their concerns, and power also to alter the same from time to time as shall seem to them proper; and shall also have full power to carry on and manage all the affairs in said homes; *provided*, that the county recorder of the county in which each home is located, shall act in connection with the resident trustee in making quarterly settlements with the orphans' home superintendents, for which service he shall be allowed three dollars per day, to be audited and drawn in the same manner with the mileage of trustees.

Recorder to act with.

SEC. 1625. No member of the general assembly shall be eligible to the office of trustee during the term for which he was elected.

Members of general assembly.
Compensation of board.
11 G. A. ch. 92.
14.

SEC. 1626. The members of said board shall each receive the same mileage, going to and returning therefrom, as members of the general assembly.

[This section is modified as to compensation by 17th G. A., ch. 92, which is inserted following § 3826.]

Oath of. Same, § 5.

SEC. 1627. Said trustees shall, before entering upon the discharge of their duties, take and subscribe an oath or affirmation to support the constitution of the United States and of this state, and also faithfully to discharge the duties required of them by law, and the by-laws that may be established.

SEC. 1628. The board of trustees of the soldiers' orphans' homes shall require the respective superintendents of the soldiers' bond of, to give orphans' homes, to give a good and sufficient bond with sureties thereto for the faithful performance of their respective duties.

SEC. 1629. Said board shall have all the power of reception, transmission, and succession which belongs to an incorporation, and shall choose a president, treasurer, and secretary from their own body, and determine the bonds to be given. President, secretary, treasurer: bonds. Same, § 7.

SEC. 1630. For the support of the several orphans' homes, there is appropriated out of any money in the state treasury not otherwise appropriated, the sum of ten dollars per month for each orphan actually supported, counting the average number sustained in the several homes for the month, and upon the presentation to the auditor of state each month of a sworn statement of the average number of orphan children supported by the institution for the preceding month, the auditor shall draw his warrant upon the treasurer of state in favor of the treasurer of the board of trustees of the Iowa soldiers' orphans' homes, for the sum hereinbefore provided. Appropriation for. Same, §§ 8, 10, 11. 12 G. A. ch. 66, § 1.

SEC. 1631. The expenses of the transmission of orphans to the homes, and of the board and management, shall be paid out of the fund so provided. Expenses. 11 G. A. ch. 92, § 9.

SEC. 1632. The board of trustees shall make a full and minute report of all the disbursements of the homes, and of their condition, financial and otherwise, to each regular session of the general assembly. Report to general assembly. Same, § 12.

SEC. 1633. In the enumeration of persons between the ages of five and twenty-one years, as provided by section seventeen hundred and forty-four of chapter nine of this title, the orphans at the several homes shall in no case be enumerated in the school district in which such homes are located, except in cases where the mother, guardian, or other person having the legal charge or control of such child, other than the officers of the home, shall reside in such district. Enumeration of orphans. 12 G. A. ch. 66, § 6.

SEC. 1634. Any child in either of the orphans' homes may, with the consent of the parents or guardian of such child, be adopted by any citizen of this state, but no article of adoption shall be of any force or validity until approved by the board of trustees, nor shall any child so adopted be removed from the home until articles of adoption are so approved. The board of trustees shall have power to discharge from the homes all children who are of proper age, or have sufficient means to provide for themselves, or whose mothers have sufficient means and are competent to take care of them. Any child adopted from either of the homes shall be returned to the home from which it was taken upon the order of the board of trustees, and the board shall make such order whenever they are satisfied that such child is not properly trained, educated, and provided for by the person by whom it was adopted. Such order shall be entered on the minutes of the proceedings of the board of trustees, and shall discharge and cancel the articles of adoption. Discharge of. Adoption of children: trustees to approve. Same, § 7.

SEC. 1635. The assessor of each ward and township, when he is making assessment for each term of two years, shall take an enumeration of all the children of deceased soldiers who were in Assessors to enumerate children of deceased soldiers. 11 G. A. ch. 92, § 13.

the military service of the government of the United States from his ward or township, naming the company, regiment, battery, batallion, or organization to which the deceased soldiers belonged, and make accurate returns to the board of supervisors of his county, designating the name, age, and sex of the children belonging to the family of the deceased for which the assessor shall receive the same compensation as for other services.

Supervisors to revise. SEC. 1636. The board of supervisors shall revise said enumeration list of orphans from time to time, by adding thereto or striking therefrom as they may deem proper. **Same, § 14.**

Auditor to furnish blanks. SEC. 1637. The county auditor shall furnish to the assessors of the several townships in his county, such blanks as may be necessary for taking the aforesaid enumeration. **Same, § 15.**

Orphan fund: control of. SEC. 1638. The board of supervisors of the several counties shall have control of the county orphan funds, and shall use the same for the maintenance and education of the orphans aforesaid, in such a manner and in such sums as the exigencies of the case may demand, and for no other purpose. **Same, § 16.**

Provided by tax. SEC. 1639. The board of supervisors may levy a tax not to exceed one-half mill on the dollar in any one year, on all the taxable property in their county, provided that there are any such orphans in their county needing such aid, and shall apply said fund in such manner as hereinbefore directed. **Same, § 17.**

Supervisors to see children are cared for. SEC. 1640. If the children of the deceased soldiers aforesaid have no natural or other guardian, or are neglected, the board of supervisors may appoint some suitable person in the township, who shall see that said children are cared for according to the spirit and intent of this chapter. **Same, § 18.**

County soldiers' orphan fund. SEC. 1641. The funds raised under the provisions of section sixteen hundred and thirty-nine, shall be called the soldiers' county orphan fund, and shall be levied, collected, and paid out in the same manner as other county funds. **Same, § 19.**

Orphans may attend homes. SEC. 1642. The provisions regarding this county tax shall not be so construed as to prevent the orphans, or any number thereof, from their respective counties, to attend any orphans' home in this state. **Same, § 20.**

[Sixteenth General Assembly, Chapter 94.]

Who may be admitted: not restricted to soldiers' orphans. SEC. 1. The board of trustees of the soldiers' orphans' home may receive into the care and privileges of the said home at Davenport, such destitute children as should, in their judgment, properly be admitted into said institution; *provided*, that the destitute children referred to, in this act, shall in all cases, have a legal settlement in this state; and *provided further*, that the soldiers' orphans now at the other Iowa soldiers' orphans' homes shall be received at this institution and properly provided for before other children shall be received into this institution. **Proviso.**

Application for admission: how made. SEC. 2. All applications for the admission of such children shall be made through the board of supervisors of the county, wherein the person or persons to be admitted reside.

Government. SEC. 3. All children admitted to the said home under the provisions of this act, shall from and after the date of their reception be subject to all the rules and regulations therein in force; and the trustees of said home shall have all the control over and

all the powers and rights of disposal of said children as are now or may be by law given them, in respect to the orphans of soldiers.

SEC. 4. The propriety of admitting any child, under the provisions of this act, into the said home, shall be determined by the trustees of said institution. They may refuse to admit any child, ^{Trustees to determine who shall be admitted.}

SEC. 5. Payment to the said home, for the support and maintenance of children admitted as herein provided, and expenses of transmission of children to said home, shall be made by the state auditor, at the same time and in the same manner as is now or may be provided by law for the maintenance of soldiers' orphans. ^{Payment for support.}

SEC. 6. The board of supervisors of the county from which such children are received into said home, shall make provisions ^{Board of supervisors shall provide.} for the payment, from any funds of the county not otherwise appropriated, for the amounts due monthly for the support of said children, and expenses of their transmission to said home, which amounts shall be paid to the state auditor at the same time that the state taxes are paid.

SEC. 7. The trustees shall provide for the regular employment ^{Employment.} of all children received into the home, in some useful industrial pursuit, in order to enable them to support themselves after their discharge from the home, and shall also provide for each child the means of obtaining a common school education while such ^{Education.} children remain inmates of the home. And any profits arising from any such labor shall go into the general support of the home, and shall be accounted for by the managers.

SEC. 8. In cases of neglect or refusal of the board of supervisors of any county in the state to make the necessary levy for the support of children sent from said county, then, and in that case, the state board of equalization is hereby authorized and empowered to make the levy for such delinquent county or counties. ^{In case of refusal of board to make levy.}

[Sec. 9 is temporary; sec. 10 amends § 1623, which see.]

ASYLUM FOR FEEBLE-MINDED CHILDREN.

[Sixteenth General Assembly, Chapter 152.]

SECTION 1. There is hereby established at Glenwood, in Mills county, in this state, an institution to be known as the asylum for feeble-minded children, and the property of the state at that point, including buildings and grounds heretofore used for the western branch of the Iowa soldiers' orphans' home, shall be used for that purpose. Said institution shall be under the management of a board of trustees, consisting of three persons, two of whom shall constitute a quorum for business. Said trustees shall be elected by the general assembly, one of whom shall be elected for two years, one for four years, and one for six years, and each general assembly shall hereafter elect one trustee for six years. ^{Location: board of trustees.}

[A substitute for the original section; 18th G. A., ch. 164, § 1; § 2 of the latter act is inserted following this act.]

SEC. 2. The purposes of this establishment are to care for, support, train, and instruct feeble-minded children. ^{Object of institution.}

SEC. 3. The board of trustees shall appoint a superintendent, whose duty it shall be under the direction of the board, to super-

intend the care, management, training, and instruction of the inmates of the asylum, and the management of its finances. He shall give a bond to the state of Iowa, in such sum as the board shall require, to be approved by the board, conditioned for the faithful performance of his duties. He shall make quarterly settlements with the board, the latter being represented by the resident trustee, assisted by the county auditor. The auditor shall receive three dollars per day for his services while so employed. The superintendent shall be removable by the board at its pleasure.

SEC. 4. The board of trustees shall have the general supervision of said asylum and all its affairs, and shall adopt such rules and regulations for the management of the same as will carry into effect the provisions and purposes of this act. The trustees shall meet and organize as soon as possible after the taking effect of this act. They shall elect one of their number president, another treasurer; they shall also elect a person, who may or may not be one of their number, secretary. The treasurer shall give such bond as the board shall require conditioned for the faithful accounting of all moneys that come into his hands.

The secretary shall receive three dollars per day for the time he is actually employed during the sessions of the board or under their direction. Said board shall meet on the first Wednesday in November of each year, and at such other times as two of their number may direct. All of said meetings after the organization of the board, shall be at the asylum.

Compensation. The full compensation of the members of said board shall be mileage, such as is allowed by law to the members of general assembly.

[As to compensation of trustees of state institutions, see 17th G. A., ch. 92, inserted following § 3826.]

Who shall be admitted. SEC. 5. There shall be received into the asylum weak-minded children between the age of seven and eighteen years whose admission may be applied for as follows:

First. By the father and mother, or by either of them, if the other be dead or adjudged to be insane.

Second. By the guardian duly appointed.

Third. In all other cases, by the board of supervisors of the county in which such child resides. It shall be the duty of such board of supervisors to make such application for any such child that has no living sane parent or guardian in the state.

Form of application. SEC. 6. The forms for application for admission into the asylum shall be such as the trustees shall prescribe, and each application shall be accompanied by answers under oath to such interrogatories as the trustees shall by rule require to be propounded.

Support of children. SEC. 7. For the support of said institution there is hereby appropriated out of any money in the state treasury not otherwise appropriated, the sum of ten dollars per month for each child therein actually supported by the state, counting the actual time such child is an inmate and supported by such institution, and upon presentation to the auditor of state, for each month, of a sworn statement of the average number of children supported in the institution by the state, for the preceding month, the auditor shall draw his warrant upon the treasurer of state in favor of the treasurer of the board of trustees for such sum.

In cases where the parents or guardian are able to do so, they shall support the child, or children, whose admission they apply for, and such ability to support shall be determined by the board of supervisors of the county in which such children reside. In cases where the parent or guardian is able to pay a portion of such support, he shall do so, and the balance shall be made up by the state; and the board of supervisors of the county where such child resides shall decide how much such parent or guardian shall pay. The superintendent in his sworn monthly statement shall show the number of such children so partially paid for, and the amount which the state is to pay, which amount shall be included in the auditor's warrant. In all cases where the parent or guardian pays under the provisions of this act the board of supervisors of the proper county shall require such security for the amount to be so paid as the said board of trustees shall prescribe.

All salaries for officers and compensation for teacher and help shall be paid out of the support fund except as otherwise herein declared. No more of said support fund shall be drawn than is necessary for the purposes for which it is appropriated.

[Sec. 8 is evidently superseded by 18th G. A., ch. 164, § 2, inserted following this act.]

SEC. 9. The board of trustees shall make a full report of the disbursements of the asylum and its condition, financial and otherwise, to the general assembly at each regular session thereof.

SEC. 10. The inmates of the asylum may be returned to the parents or guardians whenever the trustees may so direct.

[Sec's. 11 to 13 make temporary appropriations.]

SEC. 14. The superintendent may, under the direction of the board, appoint a matron and a steward, and appoint such teachers and employ such help as may be needed.

SEC. 15. The term "feeble-minded children" shall be construed to include idiot children between the ages of seven and eighteen.

[Eighteenth General Assembly, Chapter 164.]

SEC. 2. The expense of transmission of pupils to the asylum, and all clothing required for the same, shall be paid by the county sending them, when such pupils are supported by the state; in all other cases by the parents or guardians.

CHAPTER 5.

OF THE STATE REFORM SCHOOL.

SECTION 1643. A reform school shall be permanently located at Eldora, in Hardin county, and maintained for the reformation of such boys and girls under the age of sixteen years, who may be committed to it as hereinafter provided.

[As amended by 16th G. A., ch. 38, § 1, changing the age from eighteen to sixteen.]

SEC. 1644. There shall be a board of trustees, whose name and style shall be "The board of trustees of the Iowa reform school," and it shall consist of five persons, who shall be appointed by the general assembly, no two of whom shall be taken from the same congressional district, and who shall hold office for the term of six years each, and until their successors are appointed and qualified. All vacancies in said board shall be filled by appointment by the governor of the state. No member of the general assembly shall be hereafter chosen a trustee of the reform school, and no appointment shall be made till the number of trustees is reduced to five.

SEC. 1645. Said trustees shall, before entering upon the discharge of their duties, take and subscribe an oath or affirmation to support the constitution of the United States and of this state, and faithfully discharge the duties required of them by law.

SEC. 1646. The members of said board shall receive no compensation except the same mileage going to and returning from the place of meeting, as members of the general assembly, computed for the actual distance from their residence to the place of meeting; *provided*, that while employed in superintending the erection of buildings for said school, they shall receive the sum of three dollars per day and their actual traveling expenses, the amount due each trustee to be certified by the president and secretary of the board.

[For general provision as to compensation of trustees, etc., of state institutions, see 17th G. A., ch. 92, inserted following § 3826.]

SEC. 1647. Said board of trustees shall, from their board, appoint a president, secretary, and treasurer, and shall take charge of the general interests of the institution; shall have power to enact by-laws and rules for the regulation of all its concerns not inconsistent with the constitution and laws of this state; to see that its affairs are conducted in accordance with the requirements of law, and that strict discipline is maintained therein; to provide employment and instruction for the inmates; to appoint a superintendent, a steward, a teacher or teachers, and such other officers as in their judgment the wants of the institution may require, and prescribe their duties; to exercise a vigilant supervision over the institution, its officers, and inmates; to remove such officers at their pleasure and appoint others in their stead, and determine the salaries to be paid to the officers; and shall also require the treasurer to execute a bond to the state of Iowa in a sufficient amount to be approved by the executive council and filed in the office of the secretary of state.

SEC. 1648. They shall cause the boys and girls under their charge to be instructed in piety and morality, and in such branches of useful knowledge as are adapted to their age and capacity, and in some regular course of labor, either mechanical, manufacturing, or agricultural, as is best suited to their age, strength, disposition, and capacity, and as may seem best adapted to secure the reformation and future benefit of the boys and girls.

SEC. 1649. The trustees, with the consent in writing of their parents or guardians, as the case may be, or in case they have no parents or guardians, may bind out boys and girls committed to the school until they attain their majority, or for any less time, stipu-

Trustees: appointment of Same, § 2.
14 G. A. ch. 131.
Oath of. 12 G. A. ch. 59,
§ 3.
Compensation of. Same, § 4.
14 G. A. ch. 116,
§ 1.
Officer chosen by trustees: rules; bond of treasurer. 12 G. A. ch. 59,
§ 5.
14 G. A. ch. 116,
§ 2.
Pupils taught: trustees to prescrib. 12 G. A. ch. 59,
§ 6.
Pupils bound out with consent of parents or guardians. Same, § 7.

lating in the indentures for the needful amount of education, and from time to time, as the rightful guardians of the boys and girls, ascertain whether the duties and obligations of the person to whom the boy or girl is bound are faithfully performed, and if not, cancel the indenture and receive the boy or girl into the school again.

SEC. 1650. When there shall be twenty or more boys and girls school visited: in the school, one or more of the trustees shall visit the school once in every month and examine the boys and girls in their school room and labor, and inspect the register and accounts of the superintendent. A record shall be kept of these visits in the books of the superintendent. Once in every year, or oftener if the trustees think it necessary, they shall examine the school in all its departments, including the accounts, vouchers, and documents of the superintendent, and prepare a report on the condition of the institution on the first Monday in November next preceding the meeting of the general assembly, which, together with a full report of the superintendent, and a list of the officers and their salaries, with an estimate of the value of the personal property of the state in connection with the school, shall be laid before the general assembly.

SEC. 1651. The superintendent, with such subordinate officers as the trustees may appoint, shall have the charge and custody of the boys and girls; he shall discipline, govern, instruct, employ, and use his best endeavors to reform the inmates in such manner as, while preserving their health, will secure the promotion, as far as possible, of moral, religious, and industrious habits, and regular, thorough progress and improvement in their studies, trades, and employment.

SEC. 1652. He shall, before entering upon his duties, give a bond to the state, with sureties, the amount and sureties to be satisfactory to the board of trustees, conditioned that he shall faithfully perform all his duties, and account for all money received by him as superintendent, which bond shall be filed in the office of the secretary of state; he shall have charge of all the property of the institution within the precincts thereof; he shall keep in suitable books complete accounts of all his receipts and expenditures, and of all property intrusted to him, showing the income and expenses of the institution, and in such manner as the trustees may require, for all money received by him. His books and documents relating to the school shall, at all times, be open to the inspection of the trustees. He shall keep a register containing the name, age, and circumstances connected with the early history of each boy and girl, and shall add such facts as shall come to his knowledge relating to his or her history while at the institution, and after leaving it.

SEC. 1653. When a boy or girl under the age of sixteen years, shall, in any court of record, be found guilty of any crime, excepting murder, the said court may, if in its opinion the accused is a proper subject therefor, instead of entering judgment, cause an order to be entered that said boy or girl be sent to the state reform school pursuant to the provisions of this chapter, and a copy of said order, duly certified by the clerk, under the seal of said court, shall be a sufficient warrant for carrying said boy or girl to the

report of trustees and superintendent.
Same, § 8.

superintendent and officers of: duties defined.
Same, § 9.

superintendent to give bond: have charge of property: keep accounts.
Same, § 10.

When convicted of crime may be sent to school by the court.
Same, § 11.

school, and for his or her commitment to the custody of the superintendent thereof.

[As amended as to age, 16th G. A., ch. 38, § 2; § 4 of the same act is as follows:]

SEC. 4. Not to be committed under seven years of age. No boy or girl shall ever be committed to the Iowa reform school in any case, who is under the age of seven years, or who is not of sound mind.

Proceedings when convicted before justice of the peace. When a boy or girl under the age of sixteen shall be convicted before a justice of the peace or other inferior court of any crime, or of being a disorderly person, it shall be lawful for the magistrate before whom he or she may be convicted, to forthwith send such boy or girl, together with all the papers filed in his office on the subject, under the control of some officer to a judge of a court of record, who shall then issue an order to the parent or guardian of said boy or girl, or such person as may have him or her in charge, or with whom he or she has last resided, or one known to be nearly related to him or her, or if he or she be alone and friendless, then to such person as said judge may appoint to act as guardian for the purposes of the case, requiring him or her to appear at a time and place stated in said order, to show cause why said boy or girl should not be committed to the reform school for reformation and instruction.

Order: how served: compensation of officers. [As amended as to age, by 16th G. A., ch. 38, § 3.] Said order shall be served by the sheriff or other officer, by delivering a copy thereof, personally, to the party to whom it is addressed, or leaving it with some person of full age at the place of residence or business of said party, and immediate return shall be made to the said judge of the time and manner of such service. The fees of the sheriff or other officer under this chapter, shall be the same as now allowed by law for like services.

The same fees should be allowed | penitentiary, under § 3788: *Bringolf v. Polk Co.*, 41-554, 559.

Hearing: commitment. At the time and place mentioned in said order, or at the time and place to which it may be adjourned, if the parent or guardian to whom said order may be addressed shall appear, then in his or her presence, or if he or she shall fail to appear, then in the presence of some suitable person whom the said judge shall appoint as guardian for the purposes of the case, it shall and may be lawful for the said judge to proceed to take the voluntary examination of said boy or girl, and to hear the statements of the party appearing for him or her and such testimony in relation to the case as may be produced, and if upon such examination and hearing the said judge shall be satisfied that the boy or girl is a fit subject for the state reform school, he may commit him or her to said school by warrant.

Warrant: contents of. The judge shall certify in the warrant the place in which the boy or girl resided at the time of his or her arrest, also his or her age, as near as can be ascertained, and command the said officer to take the said boy or girl and deliver him or her, without delay, to the superintendent of said school, or other person in charge thereof, at the place where the same is estab-

lished; and such certificate, for the purpose of this chapter, shall be conclusive evidence of his or her residence or age. Accompanying this warrant, the judge shall transmit to the superintendent by the officer executing it, a statement of the nature of the complaint, together with such other particulars concerning the boy or girl as the judge is able to ascertain.

SEC. 1658. If the judge is of the opinion that the boy or girl ^{Appeal.} is not a fit subject for the school, or, if said boy or girl shall appeal from the decision of the court in which the conviction was had, he shall remand him or her to the custody of the officer who had him or her in charge, to be returned to the magistrate before whom the conviction was had, to be dealt with according to law.

SEC. 1659. If any parent or guardian shall make complaint to a judge of a court of record, that any boy or girl, the child or ward of such parent or guardian, is habitually vagrant or disorderly, or incorrigible, it shall and may be lawful for said judge to issue a warrant to have the sheriff or constable to cause said boy or girl to be brought before him at such time and place as he may appoint, when and where said judge shall examine the parties, and if in his judgment the boy or girl is a fit subject for the reform school he may issue an order, with the consent of said parent or guardian endorsed thereon, to be executed by a sheriff or constable, committing said boy or girl to the custody of the superintendent of said school for reformation and instruction till he shall attain the age of majority; *provided*, that security for the payment of the expenses of said complaint, commitment, and of carrying said boy or girl to the reform school, and the expenses of board at such school, may, in the discretion of said judge, be required of said parent or guardian.

SEC. 1660. No boy or girl shall be committed to said reform school for a longer term than until he or she attain the age of majority, but the said trustees by their order may, at any time after one year's service, discharge a boy or girl from said school as a reward of good conduct in the school and upon satisfactory evidence of reformation.

SEC. 1661. Any boy or girl committed to the state reform school shall be there kept, disciplined, instructed, employed, and governed, under the direction of the trustees, until he or she arrives at the age of majority or is bound out, reformed, or legally discharged. The binding out or discharge of a boy or girl as reformed or having arrived at the age of majority, shall be a complete release from all penalties incurred by conviction of the offense for which he or she was committed.

SEC. 1662. If any boy or girl, convicted of a felony, committed to the reform school, shall prove unruly or incorrigible, or if his or her presence shall be manifestly and persistently dangerous to the welfare of the school, the trustees shall have power to order his or her removal to the county from which he or she came and delivery to the jailor of the said county, and proceedings against him or her shall be resumed as if no warrant or order committing him or her to the reform school had been made.

SEC. 1663. Every person who unlawfully aids or assists any boy or girl lawfully committed to the reform school in escaping, ^{Punishment for aiding pupil to escape.} or attempting to escape therefrom, or knowingly conceals such ^{Same, § 21.}

Complaint by parent or guardian: proceedings.
Same, § 17.

Majority: discharge.
Same, § 18.

Pupil retained: effect of binding out.
Same, § 19.

boy or girl after his or her escape, shall be punished by fine not exceeding one thousand dollars, and imprisonment in the penitentiary not exceeding five years.

[Fifteenth General Assembly, Chapter 21.]

Appropriation for support of reform school. SEC. 1. There is hereby appropriated, out of any money in the state treasury not otherwise appropriated, the sum of eight dollars per month, or so much thereof as may be necessary, for each boy or girl actually supported in the state reform school, counting the average number sustained in the school for the month; and upon the presentation to the auditor of state, each month, of a sworn statement by the superintendent of the average number of boys and girls supported by the school for the preceding month, the auditor of state shall draw his warrant on the treasurer of state in favor of the treasurer of the board of trustees of the state reform school for the sum hereinbefore provided.

How drawn.

[As amended as to sum per month by 17th G. A., ch. 97, § 1. § 2 of the original, is repealed by § 2 of the latter act.]

CHAPTER 6.

COLLEGE FOR THE BLIND.

Trustees of: who compose: how chosen. SECTION 1664. There shall be maintained at Vinton, in the county of Benton, a college for the blind, under the supervision of a board of trustees consisting of six persons who shall be chosen by the general assembly as their present or future terms of office expire, and hold their offices for four years from the date of each appointment.

Same. SEC. 1665. No member of the general assembly shall hereafter be chosen a trustee of the college for the blind.

Supervision: power of trustees. R. § 2145. SEC. 1666. The trustees shall have the general supervision of the institution, adopt rules for the government thereof, provide teachers, servants, and necessaries for the institution, and perform all other acts necessary to render the institution efficient and to carry out the purpose of its establishment.

Quorum. R. § 2146. SEC. 1667. Three of said trustees shall constitute a quorum for the transaction of business.

Compensation of trustees. 10 G. A. ch. 36, § 3. SEC. 1668. Trustees residing more than ten miles from the institution, shall be allowed five dollars per day for actual services and ten cents per mile to and from their place of meeting, which shall be paid out of the funds of the institution, for attendance at the quarterly and annual meetings of the board.

[Modified as to compensation by 17th G. A., ch. 92, inserted following § 3826.]

Trustees to fix compensation of officers. 10 G. A. ch. 54, §§ 2, 3. 11 G. A. ch. 43, §§ 2, 3. 12 G. A. ch. 94, § 2. SEC. 1669. The board of trustees shall fix the compensation of all the officers and employes of said institution, at such rate as shall by them be deemed just and equitable; *provided*, that in no event shall the total amount of expenses of the institution exceed the total amount of appropriation for the same.

SEC. 1670. The assistant officers shall receive their appointment from the board, upon the nomination of the principal, and shall be responsible to the principal for the faithful performance of their duties, and the principal shall be held responsible to the board for the performance of his duties.

SEC. 1671. The trustees shall appoint some one of the employees, steward, at such compensation as they may deem just, who, under their direction, shall purchase all supplies for the institution.

SEC. 1672. Persons not residents of the state shall be entitled to the benefits of this institution, on paying to the treasurer thereof the sum of fifty-four dollars a quarter in advance, *provided*, that no such person shall be so received to the exclusion of any resident of this state.

[As amended, as to rate of charge, by 17th G. A., ch. 72, § 1.]

SEC. 1673. The board of trustees shall elect one of their number president: treasurer to give bond. president and another treasurer of the institution, and the treasurer shall enter into bonds, with security, in the sum of not less than thirty thousand dollars, to be approved by the executive council, conditioned for the faithful performance of his duties, and the honest disbursement of and accountal for all moneys belonging to the institution, which bond shall be filed with the secretary of state.

SEC. 1674. The board of trustees shall not create any indebtedness against the institution, exceeding the amount appropriated by the general assembly for the support thereof.

SEC. 1675. To meet the ordinary expenses of the institution, including furniture, books, and maps, the compensation of principal, matron, teachers, and employees, and to provide for contingencies, there is hereby appropriated the sum of eight thousand dollars annually, or so much thereof as may be necessary, to be drawn quarterly, and then only as necessary to meet the wants of the institution.

SEC. 1676. For the purpose of meeting current expenses, there is appropriated out of the state treasury so much as necessary, not to exceed thirty-two dollars per quarter to each pupil in said institution, except non-residents and those who were non-residents at the time of their reception.

[As amended by 17th G. A., ch. 72, § 2, and 18th G. A., ch. 165.]

SEC. 1677. The principal of said institution shall report to the governor, on or before the fifteenth day of November preceding each regular session of the general assembly, the number of pupils in attendance, with the name, age, sex, residence, place of nativity, and also the cause of blindness of each pupil. He shall also make a report of the studies pursued and trades taught in said institution, together with a complete statement of the expenditures, and also the number, kind, and value of articles manufactured and sold.

SEC. 1678. When the pupils of said institution are not otherwise supplied with clothing, they shall be furnished by the principal, who shall make out an account therefor in each case against the parent or guardian, if the pupil be a minor, and against the pupil if he or she have no parent or guardian or has attained the age of majority, which account shall be certified to be correct and

signed by the principal, and shall be presumptive evidence of its correctness in the courts, and such principal shall forthwith remit such account to the treasurer of the proper county, who shall proceed to collect the same by suit, if necessary, in the name of such institution, and pay the same into the state treasury, and said principal shall, at the same time, remit a duplicate of such account to the auditor of state, who shall credit the same to account of the college for the blind, and charge it to the proper county.

Appropriation : clothing furnished pupils, shall be drawn quarterly on the order how drawn.
Same ch's. 228.
13 G. A. ch. 129,
R. 4.
of the trustees of the institution made on the auditor of the state, who shall draw his warrant in the name of such institution on the treasurer, as ordered by the trustees.

Education furnished at expense of state.
R. 2147.
SEC. 1679. The above appropriations, including account of age and capacity, shall be entitled to an education in this institution at the expense of the state. Each county superintendent of common schools shall report on the first day of November of each year to the superintendent of the college for the blind, the name, age, residence, and post office address of every blind person, and every person blind to such an extent as to be unable to acquire an education in the common schools, and who resides in the county in which he is superintendent.

[Secs. 1681, 1682 and 1683, providing for an industrial home for the blind, repealed; 16th G. A., ch. 71.]

Vacancies in board: how filled.

SEC. 1684. Upon the death, resignation, or removal from the state of any member of the board of trustees, the general assembly, if in session at the time, shall fill the vacancy, but if the general assembly is not in session, then shall the governor fill such vacancy by appointment, to continue until the next regular session of the general assembly and until a successor shall be by that body elected. The refusal or neglect of any duly elected or appointed member of said board to act, shall be deemed a resignation.

CHAPTER 7.

OF THE INSTITUTION FOR THE DEAF AND DUMB.

Trustees of: how appointed.
R. 2157, 2158.
11 G. A. ch. 136,
R. 1.
SECTION 1685. There shall be permanently maintained at Council Bluffs, in the county of Pottawattamie, an institution for the support and education of the deaf and dumb, under the supervision of a board of trustees.

[As amended by 17th G. A., ch. 136, § 5, striking out the latter part of the original section as to election and term of office of trustees. See other sections of the act inserted following § 1696.]

Power and duty of.
R. 2158.
10 G. A. ch. 54,
R. 2, 3.
SEC. 1686. The trustees shall have the general supervision of the institution, adopt rules for the government thereof, provide teachers, servants, and necessities for the institution, and perform

all other acts necessary to render it efficient, and to carry out the purposes of its establishment.

SEC. 1687. Three of said trustees shall constitute a quorum for the transaction of business, and their proceedings at each meeting shall be recorded in a minute book, which shall be signed by those present and form a record of their proceedings.

[As to compensation of trustees of state institutions, in general, see 17th G. A., ch. 92, inserted following § 3826.]

SEC. 1688. Persons not residents of the state, of suitable age and capacity, shall be entitled to an education in said institution, on paying to the trustees thereof the sum of forty dollars a quarter in advance.

SEC. 1689. Every deaf and dumb citizen of the state, of suitable age and capacity, shall be entitled to receive an education in said institution at the expense of the state, and each county superintendent of common schools shall report on the first day of November in each year to the superintendent of the institution the name, age, and post office address of every deaf and dumb person between the ages of five and twenty-one years residing in his county, including all such persons as may be too deaf to acquire an education in the common schools.

SEC. 1690. The board of trustees shall select one of their number as president and another as treasurer of the institution, and the treasurer shall enter into bonds, with security, in such sum as the board shall direct, conditioned for the faithful paying over of all money belonging to the institution upon the order of the board, which bond shall be approved by the executive council and filed with the secretary of state.

SEC. 1691. The board shall not create any indebtedness against the institution exceeding the amount appropriated by the general assembly for the use thereof.

SEC. 1692. For the purpose of meeting current expenses, there is hereby appropriated the sum of twenty-eight dollars per quarter for each pupil in said institution.

[As amended as to amount by 17th G. A., ch. 98, § 1, and 18th G. A., ch. 203.]

SEC. 1693. To meet the ordinary expenses of the institution, including furniture, books, school-apparatus, and compensation of officers and teachers, there is hereby appropriated the sum of eleven thousand dollars per annum, or so much thereof as may be necessary, which may be drawn quarterly in such sums as the necessities of the institution may require.

[As amended as to amount by 17th G. A., ch. 98, § 2, and 18th G. A., ch. 203.]

SEC. 1694. The superintendent of said institution shall report to the governor, on or before the fifteenth day of November preceding each regular session of the general assembly, the number of pupils in attendance, with the name, age, sex, residence, place of nativity, and also the cause of the deafness of each pupil. He shall make a report of the studies pursued and trades taught in said institution, together with a complete detailed statement of the expenditures for said institution and the receipts on account of the same, the salaries paid to each officer and teacher,

Quorum: rec-
ord kept.
R. § 2159.

Non-residents.
R. § 2160.

Education to
residents fur-
nished by state
R. § 2156.
14 G. A. ch. 114.

Officers:
treasurer to
give bond.
R. § 2162.

Indebtedness.
R. § 2163.

Appropriation.
10 G. A. ch. 54,
§ 5.
12 G. A. ch. 106,
§ 4.
Priv. laws, 14 G.
A. ch. 75, § 2.

Same.
10 G. A. ch. 54,
§ 1.

Superintend-
ent to report to
governor: con-
tents of.
Same, § 6.
12 G. A. ch. 106,
§ 5.

and also the kind, number, and value of articles manufactured and sold.

Clothing for pupils furnished: how procured.
10 G. A. ch. 54,
§ 7.
12 G. A. ch. 106,
§ 6.

SEC. 1695. When the pupils of said institution are not otherwise supplied with clothing, they shall be furnished by the superintendent, who shall make out an account of the cost thereof in each case, against the parent or guardian if the pupil be a minor, and against the pupil if he or she have no parent or guardian or have attained the age of majority; which account shall be certified to be correct by said superintendent; and when so certified, such an account shall be presumed correct in all courts. The superintendent shall thereupon remit said accounts by mail to the treasurer of the county from which the pupil so supplied shall have come to said institution; such treasurer shall proceed at once to collect the same by suit in the name of his county if necessary, and pay the same into the state treasury; the superintendent shall, at the same time, remit a duplicate of such account to the auditor of state, who shall credit the same to the account of the institution, and charge it to the proper county; *provided*, if it shall appear by the affidavit of three disinterested citizens of the county, not of kin to the pupil, that the said pupil or his or her parents would be unreasonably oppressed by such suit, then such treasurer shall not commence the said suit, but shall credit the same to the state on his books, and report the amount of such account to the board of supervisors of his county, and the said board shall levy sufficient tax to pay same to the state, and to cause the same to be paid into the state treasury.

Appropriations: how drawn.
10 G. A. ch. 54,
§ 8.
12 G. A. ch. 106,
§ 7.

SEC. 1696. The above mentioned appropriations, including the accounts for clothing aforesaid, shall be drawn quarterly on the requisition of the board of trustees of the institution, in the usual manner, and then only in such amounts as the wants of the institution may require.

[Seventeenth General Assembly, Chapter 136.]

Board of trustees: term of.

SEC. 1. The board of trustees of the institution for the deaf and dumb shall consist of three persons, to be elected by the present general assembly, one for two years, one for four years, and one for six years; and each subsequent general assembly shall elect one trustee to serve for six years. Two of said trustees shall constitute a quorum for the transaction of business. Said trustees shall enter upon the duties of their office on the first day of May in the year in which they are elected.

Teachers, etc., may not reside in the institution.

SEC. 2. And no teacher, superintendent, steward, or other employee, shall reside in the institution, or receive board, or any allowance of provision, clothing, fuel, or other supplies from the funds or supplies furnished for the support of the institution, except by arrangement made in advance with the trustees, and at and for prices that shall be just to the state.

[SEC. 3 makes an appropriation for buildings.]

Inmates may be used in any suitable labor.

SEC. 4. The trustees shall have authority to utilize the inmates of the institution, so far as practicable without interfering with the proper education of the inmates, in any suitable labor on the farm, in the workshops, in the erection of buildings belonging to the institution, or in the domestic service of the same.

[SEC. 5 amends § 1685, which see.]

[SEC. 6 makes a temporary appropriation.]

STATE NORMAL SCHOOL.

[Sixteenth General Assembly, Chapter 129.]

SECTION 1. A school for the special instruction and training Where established.
of teachers for the common schools of this state is hereby estab- lished.
lished at Cedar Falls, in Black Hawk county.

SEC. 2. The school shall be under the management and con- How managed.
trol of a board of directors consisting of six members, no two of whom shall be from the same county. They shall be elected by the general assembly, two for two years, two for four years and two for six years, and the general assembly shall elect two members of said board every two years, for the full term of six years as the terms of office of the respective classes expire. Their term of office shall commence on the 1st day of June following their election. No member of the board shall be a teacher in the school or receive other compensation for his services than a reimbursement of his actual expenses to be certified to by him and paid out of the state treasury. Any vacancy occurring in the Vacancy.
board shall be filled by the appointment of the governor.

SEC. 3. The board shall convene at the call of the superin- Board shall
tendent of public instruction on or before June 15th, 1876, and convene and
having each qualified according to law, shall organize by the elec- organize,
tion of a president and vice president from their member [number],
and a secretary and a treasurer who shall be persons not numbers
[members] of the board. The secretary shall receive such com-
pensation as may be fixed by the board not to exceed the sum of
one hundred dollars and actual traveling expenses. The treasurer
shall receive no compensation but shall receive re-imbursement of
actual expenditures.

SEC. 4. The board shall require a bond in the sum of twenty Treasurer
thousand dollars of the treasurer with proper and sufficient sureties,
conditional for the safe keeping of funds coming into his hands.
He shall receive and disburse all moneys hereby appropriated,
and any other funds as the board may provide. The board may
require of any other officer or employe who may be authorized
to receive or pay out money a like bond.

SEC. 5. It shall be the duty of the board, in every necessary Duties of board.
manner with the means at their disposal, to provide for and carry
out the object for which the school is established. For that pur-
pose they shall employ competent and suitable teachers, and
other employes. They shall direct, use and control all the
property of the state coming into their hands for that purpose.
They shall control and direct the expenditure of all moneys.
They shall make all necessary rules for the management of the
school and the government thereof, and shall provide for the ad-
mission of pupils from the several counties of the state in propor-
tion to their respective population and upon the appointment of
respective boards of supervisors, or as the board may direct.
They shall establish and publish uniform rules for the admission Rules of ad-
of pupils thereto and such rules shall provide for equal rights in mission to
said school to all the teachers in the state, but they shall require
in all cases satisfactory evidence of the good character of the
pupil. They shall also further require all pupils upon their ad-

mission to the school to sign a statement of their intention in good faith to follow the business of teaching in the schools of the state. It shall also be the duty of the board to make all possible and necessary arrangements with the means at their disposal for the boarding and lodging of pupils, but the pupils shall pay the cost of the same. They shall require each pupil to pay a fee for contingent expenses amounting to not more than one dollar per month. The school shall be open during such part of the year as the board shall determine, but the sessions shall continue at least twenty-six weeks. But the board of directors may, in their discretion, charge the pupils with a tuition fee not exceeding six dollars per term, if such charge shall be necessary in order to the proper support of the school as provided by law.

[As amended by the addition of the last sentence, 17th, G. A., ch. 142, § 2.]

To take buildings used as soldiers' orphans' home.

SEC. 6. At the close of the year, and on or before the first day of July, 1876, it shall be the duty of the board of trustees of the Iowa soldiers' orphans' home, to deliver over to the board of directors provided for herein, the buildings and grounds at Cedar Falls, Iowa, now occupied by said home, transferring for the purpose the inmates of said home to the home at Davenport. They shall also at the same time turn over in like manner all the personal property at said home at Cedar Falls, except such as is necessary for and adapted to the personal use of such inmates at Davenport, and a careful inventory and appraisement thereof shall be made, and a proper voucher given therefor by said board of directors.

Board may make changes in same.

SEC. 7. The board of directors shall at once proceed to make such improvements and changes in said buildings and grounds as may be necessary to *adopt* [adapt] the same to the use of said school but without greater expense to the state than is provided for in this act, and shall, on or before September 10th, 1876, open the same to the use and instruction of pupils.

When shall open.

[Sec. 8 makes a temporary appropriation.]

Board to report to supt. of public instruction.

SEC. 9. The said board shall make, at the end of each school year, to the superintendent of public instruction, a detailed report of their proceedings during the year. Their report shall also contain the number of teachers employed in the school, with the compensation of each, the number of pupils, classified; the amount of receipts and expenditures and the items thereof, with such other information and recommendations as they may deem expedient, which report shall be embodied in the superintendent's report to the general assembly.

CHAPTER 8.

OF COUNTY HIGH SCHOOLS.

SECTION 1697. Each county having a population of two thousand inhabitants or over, as shown by the last state or federal census, may establish a high school on the conditions and in the manner provided in this section.

May be established.
13 G. A. ch. 116, § 1.

manner hereinafter prescribed, for the purpose of affording better educational facilities for pupils more advanced than those attending district schools, and for persons desiring to fit themselves for the vocation of teaching.

SEC. 1698. When one-third of the electors of a county, as shown by the returns of the last proceeding election, shall petition the board of supervisors requesting that a county high school be established in their county at the place in said petition named, then, or when said board in its discretion shall deem proper, said board shall give twenty days' notice previous to the next general election, or previous to a special election duly called for that purpose, that they will submit the question to the electors of said county whether such high school shall be established; at which election said electors shall vote by ballot, for or against establishing such county high-school. The notice contemplated in this section shall be given through one or more newspapers published in said county, if any be published therein, and by at least one written or printed notice to be posted in each township.

SEC. 1699. After said election, the ballots on said question shall be canvassed in the same manner as in the election for county officers; and if a majority of all the votes cast on said question shall be in favor of establishing said school, the board of supervisors shall immediately proceed to appoint six persons, who shall be residents of the county, but not more than two of whom shall be residents of the same township, who shall, with the county superintendent of common schools, constitute a board of trustees for said high school. Each of said trustees appointed as aforesaid shall hold his office until his successor is elected and qualified, and shall be required, within ten days after appointment, to qualify by taking the oath of office, and giving such bond as may be required by the said board of supervisors, for the faithful discharge of his duties.

SEC. 1700. At the next general election after said appointment, there shall be elected in said county six high school trustees, who shall be divided into three classes of two each; each class to hold their office one, two, and three years, respectively, and their respective terms to be decided by lot. And each year thereafter there shall be two such trustees elected to succeed those whose term is about to expire. And said trustees shall qualify and enter upon the duties of their office in the same manner, and at the same time as other county officers.

SEC. 1701. The county superintendent shall, by virtue of his office, be president of said board of trustees; and at their first meeting in each year, they shall appoint from their own number a secretary and treasurer, who shall perform the usual duties devolving upon such officers for the term of one year, or until their successors are appointed to take their places.

SEC. 1702. At said meeting, or at some succeeding meeting called for such purpose, said trustees shall make an estimate of the amount of funds needed for building purposes, for payment of teachers' wages, and for contingent expenses, and they shall present to the board of supervisors a certified estimate of the rate of tax required to raise the amount desired for such purposes. But in no case shall the tax for such purposes exceed in one year

Petition for
election: notice
published.
Same, § 2.

Votes can-
vassed: trus-
tees appointed.
Same, § 3.

Trustees classi-
fied: election
of.
Same, § 4.

County super-
intendent pres-
ident of board.
Same, § 5.

Trustees to
make estimate
of funds: tax
for, levied.
Same, § 6.

the amount of five mills on the dollar on the taxable property of the county, and, when the tax is levied for the payment of teachers' wages and contingent expenses only, shall not exceed two mills on the dollar.

Collected and paid over.
Same, § 7.

SEC. 1703. The said tax shall be levied and collected in the same manner as other county taxes, and when collected the county treasurer shall pay the same to the treasurer of the county high school, in the same manner that school funds are paid to the district treasurers as required by law.

Treasurer of board to give bond: accounts kept.
Same, § 8.

SEC. 1704. The said treasurer of the high school shall give such additional bond as the board of trustees may deem sufficient, and receive all moneys from the county treasurer and from other parties that belong to the funds of said school, and pay the same out only by direction of the board of trustees upon orders duly executed by the president, countersigned by the secretary thereof, stating the purpose for which they were drawn. Both the secretary and treasurer shall keep an accurate account of all moneys received and expended for said school; and at the close of each year, and as much oftener as required by the board, they shall make a full statement of the financial affairs of the school.

Trustees to select site: purchase materials: make contracts.
Same, § 9.

SEC. 1705. The said board of trustees shall proceed, as soon as practicable after their appointment as aforesaid, to select the best site, in accordance with the vote of the county, that can be obtained without expense to the same, and the title thereof shall be vested in said county. They shall then proceed to make such purchases of material, and to let such contracts for their necessary school buildings as they may deem proper, but shall not make any purchase or contract in any year to exceed the amount on hand and to be raised by the levy of tax that year.

Trustees to employ teachers: schools encouraged.
Same, § 10.

SEC. 1706. When said board of trustees shall have furnished a suitable building for the school, they shall employ some competent teacher to take charge of the same, and furnish such assistant teachers as they deem necessary, and provide for the payment of their salaries. As far as practicable, model schools shall be encouraged, and advanced students and those preparing to become teachers may be employed a portion of their time in teaching the younger pupils, in order that they may become familiar with the practice as well as theory of successful school-teaching, and also avoid, as far as practicable, the expense of employing other assistant teachers.

Tuition free to residents of county: trustees to make rules.
Same, § 11.

SEC. 1707. Tuition shall be free to all pupils of such school residing in the county where the same is located. The board of trustees, however, shall make such general rules and regulations as they deem proper in regard to age and grade of attainments essential to entitle pupils to admission in the school. If there should be more applicants than can be accommodated at any time, each district shall be entitled to send its equal proportion of pupils according to the number of pupils it may have, as shown by the last report to the county superintendent of common schools. And the boards of the respective school districts shall designate such pupils as may attend.

Pupils from other counties admitted.
Same, § 12.

SEC. 1708. If, at any time, the school can accommodate more pupils than apply for admission from that county, the vacancies may be filled by applicants from other counties, upon the pay-

ment of such tuition as the board of trustees may prescribe; but at no time shall such pupils continue in said school to the exclusion of pupils belonging in the county in which such high school is situated.

SEC. 1709. The principal of any such high school, with the ^{Rules} approval of the board of trustees, shall make such rules and regulations as he deems proper in regard to the studies, conduct, and government of the pupils under his charge, and if any such pupils will not conform to and obey the rules of the school, they may be suspended or expelled therefrom by the board of trustees.

SEC. 1710. The said board of trustees shall, annually, make a report to the board of supervisors of their county, which shall specify the number of students, both male and female, who have been in attendance at the county high school during the year, the branches of learning taught, the text-books used, the number of teachers employed, the amount of salary paid to them, the amount expended for library and apparatus, and for buildings and all other expenses; also the amount of funds on hand, debts unpaid, and other information deemed important or expedient to report. Said report shall be printed in at least one newspaper in the county, if any is published therein, and a copy of the report shall be forwarded to the state superintendent of public instruction.

SEC. 1711. The board of supervisors shall have power to fill any vacancy that may occur in the board of trustees of that county by appointment, until the next general election, and a majority of any such board of trustees shall be a quorum for the transaction of business.

SEC. 1712. The board of supervisors may allow each member of the board of trustees the sum of two dollars per day for the time actually employed in the discharge of his official duties, and when such accounts are presented for payment, they shall be audited and paid out of the county treasury in the same manner as other accounts against the county, and said trustees shall not be entitled to any further remuneration for services or expenses.

CHAPTER 9.

OF THE SYSTEM OF COMMON SCHOOLS.

SECTION 1713. Each civil township now or hereafter organized, and each independent school district organized as such prior to the taking effect of this code, is hereby declared a school district for all the purposes of this chapter, subject to the provisions hereinafter made.

It is contemplated that school districts shall coincide in boundary with civil townships. The only exception is found in § 1797. But no such re-

striction exists upon the formation of independent districts: *Dist. T'p of Union v. Ind. Dist. of Greene*, 41-30.

SEC. 1714. When an organized district has been left without officers, the township trustees shall give such notice for a special election of directors, as is required in cases of regular district elections; and the persons elected shall continue in office until their successors are duly elected and qualified.

SEC. 1715. When changes in civil township boundaries are made, or any district shall be divided into two or more entire townships for civil purposes, the existing board of directors shall continue to act for both or all the new districts, or parts of districts, until the next regular district election thereafter, at which time the new district townships shall organize by the election of directors. The respective boards of directors shall, immediately after such organization, make an equitable division of the then existing assets and liabilities between the old and new districts; and in case of a failure to agree, the matter may be decided by arbitrators, chosen by the parties in interest. A similar division shall be made in case of the formation or changes of boundaries of independent districts.

The directors constitute a special tribunal to make division of assets and liabilities. Their jurisdiction for that purpose is exclusive, and their decision cannot be collaterally attacked: *Ind. Sch. Dist. of Oakville v. Ind. Sch. Dist. of Asbury*, 43-444; *Dist. T'p of Viola v. Dist. T'p of Audubon*, 45-104. If this tribunal fail to act it may be compelled to do so by mandamus, but appeal from its decision cannot be had to the courts: *Ibid.* Appeal from such action may be taken, however, to the county superintendent: *Ind. Sch.*

Dist. of Lowell v. Ind. Sch. Dist. of Duxbury, 45-391.

The "failure to agree" referred to is a disagreement among the directors, acting as such tribunal, and not a failure of the new districts to agree: *Ibid.*

School-houses and real estate used for school purposes are to be taken into account in making the division of assets; but the division need not result in the partition of such real estate: *Dist. T'p of Williams v. Dist. T'p of Jackson*, 36-216.

SEC. 1716. Every school district which is now, or may hereafter be organized, is hereby made a body corporate by the name of the "district township," or "independent district," (as the case may be), of , in the county of , and in that name may hold property, become a party to suits and contracts, and do other corporate acts.

A district township is a political corporation within the meaning of Const., art. 11, § 3, fixing the limit of indebtedness of political and municipal corporations: *Winspear v. Dist. T'p of Holman*, 37-542.

SEC. 1717. Each district township shall hold an annual meeting on the second Monday in March, and the electors of the district, when legally assembled at such meeting, shall have the following powers:

1. To appoint a chairman and secretary in the absence of the regular officers;
2. To direct the sale or other disposition to be made of any school house or the site thereof, and of such other property, personal and real, as may belong to the district; to direct the manner in which the proceeds arising therefrom shall be applied; to determine what additional branches shall be taught in the schools of the district; or to delegate any of these powers to the board of directors;

Body corporate.
R. 226.
C. 51, § 1108.
9 G. A. ch. 172,
§ 5.
11 G. A. ch. 33.

Annual meeting.
R. 227-8,
203.
C. 51, §§ 1114,
1115.
9 G. A. ch. 172,
§§ 6, 7, 16.
11 G. A. ch. 143,
§ 1.
14 G. A. ch. 84.

Powers.

3. To vote such tax, not exceeding ten mills on the dollar in any one year, on the taxable property of the district township, as the meeting shall deem sufficient for the purchase of grounds and the construction of the necessary school-houses for the use of the district, and for the payment of any debts contracted for the erection of school houses, and for procuring district libraries;

4. To instruct the board of directors to transfer any surplus in the school house fund, not appropriated, to either the contingent or teachers' fund.

[As amended by adding subdivision 4; 18th G. A., ch. 63.]

The electors may provide that music shall be taught in the schools of the district: *Bellmeyer v. Ind. Dist. of Marshalltown*, 44-564.

Under the power to direct the sale or other disposition of the school-house, etc., the electors may authorize the use of such house for purpose of religious worship, Sabbath-schools, etc.: *Daris v. Boget*, 50-11; *Townsend v. Hagan*, 35-194.

A contract to repair a schoo'-house may be made by the board without a

previous vote of the directors, (§ 1753): *Williams v. Peinny*, 25-436.

The taxes for contingent and teachers' funds are to be estimated and certified by the board of directors under § 1777, and a vote of such tax by the electors, under this section, is not valid: *C. R. & M. R. R. Co. v. Carroll Co.*, 41-153.

The board of directors may incur indebtedness, etc., in carrying out the vote of the township: See note to § 1723.

SEC. 1717½. When a school district, by fire or otherwise, has been deprived of a school building, and the board of directors of such district, by the use of the powers in them vested, are unable to provide for the continuance of the school therein; then such board of directors shall call a meeting of such district. The manner of calling such meeting, and the powers of such meeting shall be as follows:

1st. The board of directors shall cause to be posted in three public places in such district, at least ten days prior to the designated time of holding such meeting, written notices of such meeting, in which shall be stated the time and place of such meetings, and the object or purpose for which same is called. *Notice.*

2nd. The powers of such meeting shall be the same as is prescribed in section seventeen hundred and seventeen hereof, except those powers which are set forth in paragraph two, after the word "applied" in the fourth line thereof, and in paragraph three, after the word "district" in the fifth line thereof. *Powers.*

[The foregoing section inserted; 18th G. A., ch. 84.]

SUB-DISTRICTS.

SEC. 1718. The several sub-districts shall, annually, on the first Monday in March, hold a meeting for the election of a sub-director, five days' notice of which meeting shall be given by the then resident sub-director, or, if there is none, by the district secretary, posting a written notice in three public places therein, and such notice shall state the hour of meeting. *Meetings of. R. 2033. 9 G. A. ch. 172, § 8.*

[The words "or before" in the first line of the section in the printed code are omitted in accordance with the "errata" given in that volume.]

SEC. 1719. At the meeting of the sub-district, a chairman and secretary shall be appointed, who shall act as judges of the election, and give a certificate of election to the sub-director elect.

*Chairman and
secretary ap-
pointed.
R. 2031.
C. 51, § 1111.
Same, § 9.*

Tie vote.

When there is a tie between two persons for the office of sub-director, the secretary shall notify the secretary of the district township board of such tie vote, and shall notify said persons to appear at the regular meeting of the board on the third Monday in March to determine the tie vote by lot before one or more members of the board elected, and the certificate of election shall be given accordingly. Should either party fail to appear or take part in the lot, the secretary shall draw for him.

[As amended by adding the provision as to a tie vote: 18th G. A., ch. 7, § 1.]

The proceedings here contemplated are a *meeting*, and also an *election*; | minutes after they were closed, *held*. | that the proceedings were invalid; and where the polls were only kept | *The State v. Wollem*, 37-131. open forty minutes, and voters were | See § 1789 and note. refused, which were offered a few

Number of
sub-directors:
how chosen.
R. §§ 2031, 2075.
C. 51, § 1112.
Same, § 10.

SEC. 1720. In all district townships comprising but one sub-district, the board of directors shall consist of three sub-directors; and in all district townships comprising but two sub-districts it shall consist of one sub-director chosen from each sub-district, and one from the district township at large, who shall in both cases be elected in the manner provided by law for the election of one sub-director from each sub-district. The judges of the respective sub-district election shall canvass the votes for sub-director chosen from the district township at large, and shall issue a certificate of election to the person elected.

[Sixteenth General Assembly, Chapter 136.]

Sex not to
render any
one ineligible.
Nor deprive
one of office.

SEC. 1. No person shall be deemed ineligible by reason of sex, to any school office in the state of Iowa.

SEC. 2. No person who may have been or shall be elected or appointed to the office of county superintendent of common schools or school director in the state of Iowa, shall be deprived of office by reason of sex.

There is nothing in the constitution | to make good, retrospectively, acts prohibiting women from holding such | which it had power to authorize in offices. The legislature has power | advance: *Huff v. Cook*, 44-639.

Sub-directors
constitute
board of direc-
tors.
R. §§ 2035, 2076.
C. 51, § 1721.
Same, § 18.
11 G. A. ch. 143,
§ 13.

Secretary and
treasurer to be
elected.

SEC. 1721. The sub-directors of the several sub-districts shall constitute a board of directors for the district township, and shall enter upon their duties upon the day fixed for the regular meeting of the board in March, at which time they shall organize by electing from their own number a president, who shall simply be entitled to a vote as a member of the board, and from the district township at large, at their regular meeting on the third Monday of September in each year, a secretary and treasurer, unless there are at least five sub-directors in the district township, in which case they may be selected from the board; and said secretary and treasurer thus elected shall qualify and enter upon the duties of their respective offices within ten days following the date of their election. If selected from the district township at large, they shall have no vote in the proceedings of the board.

[A substitute for the original section; 15th G. A., ch. 27.]

Regular and
special meet-
ings.
R. § 2038.

SEC. 1722. The board of directors shall hold their regular meetings on the third Monday in March and September of each year, and may hold such special meetings as occasion may require, at the call of the president or by request of a majority of the

board; *provided*, that the board of directors of a district-*township* may hold their meetings at any place within the civil or district ^{Place of meeting.} township in which such district township is situated.

[A substitute for the original section, 18th G. A., ch. 176.]

SEC. 1723. They shall make all contracts, purchases, payments, and sales, necessary to carry out any vote of the district; but before erecting any school house they shall consult with the county superintendent as to the most approved plan of such buildings. And all school houses erected or repaired at a cost exceeding three hundred dollars, shall be so erected or repaired by contract, and no such contract for labor or materials shall be let until proposals for the same shall have been invited by advertisement for four weeks in some newspaper published in the county where the work is to be done, if there be one published therein, if not, in the nearest newspaper in an adjoining county; and such contract shall be let to the lowest responsible bidder, and bonds with sufficient sureties for the faithful performance of the contract shall be required.

The directors cannot, by any act's, render the district liable upon an implied contract, or make valid by ratification a contract which they have no authority to make directly: *Manning v. Dist. T'p of Van Buren*, 28-332.

They have no authority to bind the district for lightning rods to be placed upon a school-house except in pursuance of a vote of the district: *Monticello Bank v. Dist. T'p of Cof-fin's Grove*, 51-350; and see *Wolf v. Ind. Sch. Dist. of Pleasant Valley*, id., 432.

Repairs proper may be contracted and paid for out of the contingent fund, without being previously authorized by a vote of the electors; but where they amount to remodeling or rebuilding, they should not be undertaken unless authorized by such vote: *Williams v. Peirny*, 23-436.

SEC. 1724. They shall fix the site for each school-house, taking into consideration the geographical position and convenience of the people of each portion of the sub-district, and shall determine what number of schools shall be taught in each sub-district, and for what additional time beyond the period required by law they shall be continued during each year.

The power to fix, carries with it the power to change the school-house site, and where the board acts within its jurisdiction in the matter, an appeal under § 1829 to the county

superintendent and not an injunction, is the proper remedy to correct errors in the exercise of the power: *Vance v. Dist. T'p of Wilton*, 23-408.

SEC. 1725. They shall determine where pupils may attend school, and for this purpose may divide their district into such sub-districts as may by them be deemed necessary; *provided*, that no such sub-district shall be created for the accommodation of less than fifteen pupils, but the board of directors shall have power

Make contracts and purchases.
R. § 1037.
9 G. A. ch. 172,
§ 20.

The board may proceed to the erection of a schoolhouse in advance of the collection of the tax voted therefor under § 1717, ¶ 3. For this purpose they may incur indebtedness not to exceed the limit fixed by the township meeting, and may, by negotiable note, borrow money to pay such indebtedness. But they cannot bind the township by borrowing money to pay a debt contracted after the limit fixed by the township has been reached. And for money borrowed to pay a legitimate debt the board can only bind the township to pay six per cent. interest: *Austin v. Dist. T'p, etc.*, 51-102.

Where the board has power to make a contract for the erection of a school-house, it may ratify one made without authority by a sub-director: *Stevenson v. Dist. T'p of Summit*, 35-462.

Select site for school-houses.
Same, § 21.
R. § 2037.

Divide districts: determine where pupils shall attend.

to rent a room and employ a teacher for the accommodation of any five scholars; *provided further*, that nothing in this chapter contained shall be construed to prohibit the construction of as many school-houses, out of moneys derived from taxes levied previous to January 1st, 1876, in any sub-district, where the sub-district comprises the entire district township, as shall have been authorized and provided for at the annual meeting of the district township electors.

[A substitute for the original section, adding the last proviso; 16th G. A., ch. 109.]

The board cannot discriminate between white and colored children and require the latter to attend a separate school: *Clark v. Board of Directors, etc.*, 24-266; *Smith v. Directors, etc.*, 40-518; *Dove v. Ind. Sch. Dist. of Keokuk*, 41-689.

Graded or union schools. R. § 2037. 9 G. A. ch. 172, § 22.

Schools: time taught: number of. R. § 2023. Same, § 12. 11 G. A. ch. 143, § 3.

SEC. 1726. They may establish graded or union schools wherever they may be necessary, and may select a person who shall have the general supervision of the schools in their district, subject to the rules and regulations of the board.

SEC. 1727. In each sub-district there shall be taught one or more schools for the instruction of youth between the ages of five and twenty-one years, for at least twenty-four weeks, of five school days each, in each year, unless the county superintendent shall be satisfied that there is good and sufficient cause for failure so to do. Any person who was in the military service of the United States during his minority shall be admitted into the schools in the sub-district in which he may reside, on the same terms on which youths between the ages of five and twenty-one are admitted.

The board may provide a school for less than twenty-four weeks in the year, with the assent of the county superintendent, and such assent may be obtained after the action of the board is had: *Herrington v. Dist. T'p, etc.*, 47-11.

Where a district fails to provide school for the prescribed period, children residing therein may attend school in another district, by consent of the directors of the latter, and the

district in which they reside will be responsible for their tuition, as provided in § 1793: *Dist. T'p of Horton v. Dist. T'p of Ocheyedan*, 49-231.

Though a person over twenty-one years of age is not entitled to attend school, yet if such person does attend, he assumes all the duties of a scholar, and is as fully subject to discipline as one under that age: *The State v. Mizner*, 45-248.

Change of books. 14 G. A. ch. 80.

SEC. 1728. The board of directors of any district township or independent district, shall not order, or direct, or make any change in the school books, or series of text-books, used in any school under their superintendence, direction, or control, more than once in every period of three years, except by a vote of the electors of the district township or independent district.

Contingent fund: use of. 9 G. A. ch. 172, § 7.

SEC. 1729. They may use any unappropriated contingent fund in the treasury to purchase records, dictionaries, maps, charts, and apparatus for the use of the schools of their districts, but shall contract no debts for this purpose.

An unauthorized purchase of maps, apparatus, etc., will not bind the districts, nor will the use thereof in the schools be a ratification of such action, so as to make the district liable. A ratification to be binding would have to be formal action of the electors:

Taylor v. Dist. T'p of Wayne, 25-447. The board may contract, in proper cases, for the purchase of an organ out of any unappropriated funds on hand: *Bellmeyer v. Ind. Dist. of Marshalltown*, 44-564.

SEC. 1730. They shall appoint a temporary president and secretary in case of the absence of the regular officers, and shall fill any vacancy that may occur in the office of president, secretary, or treasurer, or in the board of directors.

[The printed code has "president or secretary" in the last two lines, instead of "president, secretary, or treasurer," as in the orig.nal.]

SEC. 1731. They shall require the secretary and treasurer to give bonds to the district in such penalty and with such security as they may deem necessary to secure the district against loss, conditioned for the faithful performance of their official duties. The bond shall be filed with the president, and in case of a breach of the conditions thereof, he shall bring suit thereon in the name of the district township, or independent district.

The treasurer is absolutely liable on his bond for the performance of the duties of holding and paying out moneys, etc., as specified in §§ 1747-1751, and he will not be excused for the loss of money by showing the exercise of due diligence and care:

Dist. T'p of Taylor v. Morton, 37-550; nor that it was destroyed by inevitable accident: *Dist. T'p of Union v. Smith*, 39-9.

SEC. 1732. They shall, from time to time, examine the accounts of the treasurer and make settlement with him; and shall present at each regular meeting of the electors of the district township, a full statement of the receipts and expenditures of the district township, and such other information as may be deemed important.

SEC. 1733. They shall audit and allow all just claims against the district, and fix the compensation of the secretary and treasurer, and no order shall be drawn on the treasury until the claim for which it is drawn has been audited and allowed.

An order issued on a claim which has not been audited and allowed is void: *Nat'l, etc., Bank v. Ind. Dist. of Marshall*, 39-490.

Although the compensation of the treasurer is not fixed until after the expiration of his term, still he is bound by the amount allowed by the board and cannot recover on the basis of a reasonable compensation: *Wilson v. Ind. Dist. of Osceola*, 39-471.

SEC. 1734. They shall visit the schools in their district, and aid the teachers in establishing and enforcing the rules for the government of the schools; and see that they keep a correct list of the pupils, embracing the periods of time during which they have attended school, the branches taught, and such other matters as may be required by the county superintendent. In case a teacher employed in any of the schools of the district township is found to be incompetent, or is guilty of partiality or dereliction in the discharge of his duties, or for any other sufficient cause shown, the board of directors may, after a full and fair investigation of the facts of the case, at a meeting convened for the purpose, at which the teacher shall be permitted to be present and make his defense, discharge him.

The action of a board in discharging a teacher, as here provided, is judicial and not ministerial: *Smith v. Dist. T'p of Knox*, 42-522.

SEC. 1735. The majority of the board in independent districts shall have power, with the concurrence of the president of the board of directors, to dismiss or suspend any pupils from school in their district for gross immorality or for a persistent vio-

Temporary officers.
R. § 2037.
Same, § 28.

Secretary and treasurer to give bond.
R. § 2037.
C. 51, § 1144.
Same, § 24.

Examine accounts of treasurer.
R. § 2037.
C. 51, § 1146.
Same, § 25.

Audit claims.
R. § 2037.
C. 51, § 1149.
Same, § 26.

Visit schools:
make rules:
discharge
teachers,
R. § 2037.
C. 51, § 1147.
Same, 27.

lation of the regulations or rules of the school, and to re-admit them if they deem proper so to do.

A pupil cannot be dismissed for acts which do not amount to gross immorality and are not in violation of any regulation of the school; as for instance, subjecting the directors to ridicule: *Murphy v. Board of Directors, etc.*, 30-429.

A rule requiring prompt and constant attendance is reasonable, and a pupil may properly be dismissed by

the board for violating it; and acts out of school hours which are detrimental to good order and the best interests of the school, may be forbidden: *Burdick v. Babcock*, 31-562. Such rules are constitutional as a delegation to school boards of the power given the legislature under Const., art. 9, § 8. (Per Cole, J.): *Ibid.*

Certificate of election of officers filed.
9 G. A. ch. 172, § 2.

Rules for government of sub-directors.
Same, § 32.

Quorum.
R. § 2038.
Same, § 34.
10 G. A. ch. 102, § 2.

SEC. 1736. They shall, at their regular meeting in March of each year, require the secretary to file with the county superintendent, county auditor, and county treasurer each, a certificate of the election, qualification, and post-office address of the president, treasurer, and secretary of the district township, and to advise them from time to time of any changes made in said offices by appointment.

SEC. 1737. They shall make such rules and regulations as may be necessary for the direction and restriction of sub-directors in the discharge of their official duties, and not inconsistent with law.

Held, that the board had authority to direct that no school should be taught in a certain sub-district during the winter, and that a contract for the employment of a teacher,

made by the sub-director in violation of such provision was void: *Potter v. Dist. T'p of Fredericksburg*, 40-369.

SEC. 1738. A majority of the board of directors shall be a quorum to transact business, but a less number may adjourn from time to time, and no tax shall be levied by the board after the third Monday in May; nor shall the boundaries of sub-districts be changed except by a vote of the majority of the board, nor shall the members of the board, except its secretary and treasurer, receive pay out of any school funds for services rendered under this chapter.

The assent of a majority of the members of the board, individually, to a proposition will not be binding.

The action must be that of the board as such: *Herrington v. Dist. T'p of Liston*, 47-11.

PRESIDENT.

President to preside, draw drafts, sign orders.
R. § 2039.
C. 51, §§ 1122-3.
9 G. A. ch. 172, § 35.

SEC. 1739. The president shall preside at all meetings of the board of directors and of the district township; shall draw all drafts on the county treasury for money apportioned to his district, sign all orders on the treasury, specifying in each order the fund on which it is drawn, and the use for which the money is appropriated, and shall sign all contracts made by the board.

A person presenting a claim to be audited under § 1733, is not required to specify the fund on which the order is to be drawn: *Dist. T'p of Coon v. Board of Directors, etc.*, 52-297.

The president and secretary are not personally liable at the suit of an assignee of an order drawn by them on the treasurer, without authority when they were induced to issue the

same through fraud of the payee: *Boardman v. Hayne*, 29-339.

A school district may be sued, and a judgment recovered on an order properly drawn and not paid. This is contemplated by § 1787. Mandamus is not the only, even if the proper, remedy: *Cross v. Dist. T'p of Dayton*, 14-28.

SEC. 1740. He shall appear in behalf of his district in all suits brought by or against the same, but when he is individually a party this duty shall be performed by the secretary; and in all cases where suits may be instituted by or against any of the school officers to enforce any of the provisions herein contained, counsel may be employed by the board of directors.

The president is not authorized by this section to employ counsel to represent the board in case of appeal | from an order of the board: *Templin v. Dist. T'p of Fremont*, 36-411.

SECRETARY.

SEC. 1741. The secretary shall record all the proceedings of the board and district meetings in separate books kept for that purpose; shall preserve copies of all reports made to the county superintendent; shall file all papers transmitted to him pertaining to the business of the district; shall countersign all drafts and orders drawn by the president, and shall keep a register of all orders drawn on the treasury, showing the number of the order, date, name of the person in whose favor drawn, the fund on which it is drawn, for what purpose, and the amount; and shall, from time to time, furnish the treasurer with a transcript of the same.

Held, that a similar provision in the Code of '51, was directory merely, and that the fact that the records were kept on loose sheets of paper would not render the proceedings void: *Higgins v. Reed*, 8-293.

SEC. 1742. He shall give ten days' previous notice of the district township meeting, by posting a written notice in five conspicuous places therein, one of which shall be at or near the last place of meeting, and shall furnish a copy of the same to the teacher of each school in session, to be read in the presence of the pupils thereof, and such notice shall in all cases state the hour of meeting.

SEC. 1743. He shall keep an accurate account of all the expenses incurred by the district, and shall present the same to the board of directors, to be audited and paid as herein provided.

SEC. 1744. He shall notify the county superintendent when each school of the district begins, and its length of term.

SEC. 1745. Between the fifteenth and twentieth days of September in each year, the secretary of each school district shall file with the county superintendent a report of the affairs of the district, which shall contain the following items:

1. The number of persons, male and female each, in his district between the ages of five and twenty-one years;
 2. The number of schools, and the branches taught;
 3. The number of pupils, and the average attendance of the same in each school;
 4. The number of teachers employed, and the average compensation paid per week, distinguishing males from females;
 5. The length of school, in days, and the average cost of tuition per week for each pupil;
- * * * * *
9. The text-books used, and the number of volumes in the

district library, and the value of apparatus belonging to the district;

10. The number of school-houses and their estimated value;

As to deaf and dumb, and blind.
14 G. A. ch. 114, § 2.

11. The name, age, and post-office address of each deaf and dumb, and each blind person within his district between the ages of five and twenty-one, including all who are blind or deaf to such an extent as to be unable to obtain an education in the common schools.

[As amended, striking out sub-divisions 6, 7 and 8; 16th G. A., ch. 112, § 1. The matters referred to in those sub-divisions are now to be reported to the board; see amendment to § 1751.]

Penalty for failure.
R. § 2047.
C. '51, § 1137.
9 G. A. ch. 172,
§ 42.

SEC. 1746. Should the secretary fail to file his report as above directed, he shall forfeit the sum of twenty-five dollars, and shall make good all losses resulting from such failure, and suit shall be brought in both cases by the district on his official bond.

TREASURER.

Pay orders.
R. § 2048.
C. 51, § 1138.
Same, § 43.

Different funds: partial payments on orders.
R. § 2049.
C. '51, § 1139.
Same, § 44.

SEC. 1747. The treasurer shall hold all moneys belonging to the district, and pay out the same on the order of the president, countersigned by the secretary, and shall keep a correct account of all expenses and receipts in a book provided for that purpose.

A school order is not a negotiable instrument: *Shepherd v. Dist. T'p of Richland*, 22-355; *School Dist. v. Lombard*, 2 Dillon, (U. S. C. C.) 493; and an assignee thereof is bound at his peril to ascertain whether or not the officers issuing the same had authority so to do: *Boardman v. Hayne*, 29-339.

As to liability of treasurer for moneys lost, etc., see notes to § 1731.

SEC. 1748. The money collected by district tax for the erection of school-houses, and for the payment of debts contracted for the same, shall be called the "school-house fund;" that designed for rent, fuel, repairs, and all other contingent expenses necessary for keeping the schools in operation, the "contingent fund;" and that received for the payment of teachers, the "teachers' fund;" and the district treasurer shall keep with each fund a separate account, and shall pay no order which does not specify the fund on which it is drawn and the specific use to which it is applied. If he have not sufficient funds in his hands to pay in full the warrants drawn on the fund specified, he shall make a partial payment thereon, paying as near as may be an equal proportion of each warrant.

Lightning rods are not such an expense as may be paid for out of the contingent fund, and an order for that purpose drawn upon such fund is *prima facie* invalid: *Wolf v. Ind. Sch. Dist. of Pleasant Valley*, 51-432; see *Monticello Bank v. Dist.*

T'p of Coffin's Grove, 51-350.

The provision as to partial payment applies to orders drawn to pay a judgment. The holder thereof cannot insist on its being satisfied in full, to the exclusion of other creditors: *Chase v. Morrison*, 40-620.

Receive money apportioned district.
R. § 2050.
C. '51, § 1140.
Same, § 45.

Register orders.
Same, § 46.

SEC. 1749. He shall receive all moneys apportioned to the district township by the county auditor, and also all money collected by the county treasurer on the district school tax levied for his district.

SEC. 1750. He shall register all orders on the district treasury reported to him by the secretary, showing the number of the order, date, name of the person in whose favor drawn, the fund on which it is drawn, for what purpose, and the amount.

SEC. 1751. He shall render a statement of the finances of the district from time to time, as may be required by the board of directors, and his books shall always be open for inspection. Make statement to directors.

He shall make to the board, on the third Monday in September, a full and complete annual report, embracing:

1st. The amount of teachers' fund held over, received, paid out, and on hand;

2nd. The amount of contingent fund held over, received, paid out, and on hand;

3rd. The amount of school house fund held over, received, paid out, and on hand;

He shall immediately file a copy of said report with the county superintendent, and for failure to file said report, he shall forfeit the sum of twenty-five dollars to be recovered by suit brought by the district on his official bond.

[As amended, adding the provisions as to the annual report which includes matters formerly required by §1745, ¶¶ 6, 7 and 8, to be reported to the county superintendent; 16th G. A., ch. 112, § 2.]

SUB-DIRECTOR.

SEC. 1752. Each sub-director shall, on or before the third Monday in March following his election, appear before some officer qualified to administer oaths, and take an oath to support the constitution of the United States, and that of the state of Iowa, and that he will faithfully discharge the duties of his office; and in case of failure to qualify, his office shall be deemed vacant. Oath.
R. & 2032, 2079.
C. '51, §§ 1113,
1120.
Same, § 11.

SEC. 1753. The sub-director, under such rules and restrictions as the board of directors may prescribe, shall negotiate and make in his sub-district all necessary contracts for providing fuel for schools, employing teachers, repairing and furnishing school-houses, and for making all other provisions necessary for the convenience and prosperity of the schools within his sub-district, and he shall have the control and management of the school-house unless otherwise ordered by a vote of the district township meeting. All contracts made in conformity with the provisions of this section shall be approved by the president and reported to the board of directors, and said board, in their corporate capacity, shall be responsible for the performance of the same on the part of the district township. Employ teachers: make repairs: control school house.
R. & 2053.
C. '51, § 1124,
1142.
9 G. A. 172, § 48.

The district is bound by the contracts of the sub-director: *Athearn v. Ind. Dist. of Millersburg*, 33-105.

The board may restrict the sub-director to the employment of a certain class of teachers, or prohibit his employing a certain specified teacher, where such teacher has proved unsatisfactory, and a contract made in violation of such restriction would be invalid: *Thompson v. Linn*, 35-361.

The electors may authorize the use

of the school house for purposes of religious worship, etc., (notes to § 1717), and the sub-director may be compelled by mandamus to allow its use for such purposes in accordance with such vote: *Davis v. Boget*, 50-11.

The authority to repair the school-house does not authorize a contract to remodel or rebuild: See note to § 1723.

The board may regulate and restrict the action of sub-directors; see § 1737 and note.

Make list of heads of families and children.
R. § 2052.
Same, § 49.

Report to secretary.
R. § 2052.
Same, § 50.
11 G. A. ch. 143, § 6.

Dismiss pupils with concurrence of directors.
R. § 2054.
9 G. A. ch. 172, § 51.

Contracts with teachers to be in writing.
R. § 2055.
Same, § 52.

Must obtain certificate from county superintendent.
R. § 2062.
Same, § 59.

Keep register.
R. § 2062.
Same, § 60.

File copy with secretary.
R. § 2062.
Same, § 61.

SEC. 1754. He shall, between the first and tenth days of September of each year, prepare a list of the names of the heads of families in his sub-district, together with the number of children between the ages of five and twenty-one years, distinguishing males from females, and shall record the same in a book kept for that purpose.

SEC. 1755. He shall, between the tenth and fifteenth days of September of each year, report to the secretary of the district township the number of persons in his sub-district between the ages of five and twenty-one years, distinguishing males from females.

SEC. 1756. He shall have power, with the concurrence of the president of the board of directors, to dismiss any pupil from the schools in his sub-district for gross immorality, or for persistent violation of the regulations of the schools, and to re-admit them, if he deems proper so to do; and shall visit the schools in his sub-district at least twice during each term of said school.

TEACHERS.

SEC. 1757. All contracts with teachers shall be in writing, specifying the length of time the school is to be taught, in weeks; the compensation per week, or per month of four weeks, and such other matters as may be agreed upon; and shall be signed by the sub-director or secretary and teacher, and be approved by and filed with the president before the teacher enters upon the discharge of his duties.

Where a verbal contract was partly performed on each side, *held*, that there was such ratification by the district as to be binding upon it: *Cook v. Ind. Dist. of North McGregor*, 40-444.

Where the contract was signed the day school commenced and left with the sub-director, *held*, that it was his duty to file it with the president and secure his approval, and the teacher being permitted to enter upon the performance of her duties, might presume that it was approved; and that the absence of such approval would not deprive her of the right to recover compensation thereunder: *Conner v. Dist. T'p of Ludlow*, 35-375.

SEC. 1758. No person shall be employed to teach a common school which is to receive its distributive share of the school fund, unless he shall have a certificate of qualification signed by the county superintendent of the county in which the school is situated, or by some other officer duly authorized by law; and any teacher who commences teaching without such certificate, shall forfeit all claim to compensation for the time during which he teaches without such certificate.

SEC. 1759. The teacher shall keep a correct daily register of the school, which shall exhibit the number or other designation thereof, township and county in which the school is kept; the day of the week, the month and year; the name, age, and attendance of each pupil, and the branches taught. When scholars reside in different districts, a register shall be kept for each district.

SEC. 1760. The teacher shall, immediately after the close of his school, file in the office of the secretary of the board of directors, a certified copy of the register aforesaid.

GENERAL PROVISIONS.

SEC. 1761. A school month shall consist of four weeks of five school days each.

School month.
R. § 2077.
Same, § 74.

SEC. 1762. During the time of holding a teachers' institute in any county, any school that may be in session in such county shall be closed; and all teachers, and persons desiring a teacher's certificate, shall attend such institute, or present to the county superintendent satisfactory reasons for not so attending, before receiving such certificate.

Institute:
schools closed
during.
L. B. E. 1861.

SEC. 1763. The electors of any school district at any legally called school meeting, may, by a vote of a majority of the electors present, direct the German or other language to be taught as a branch in one or more of the schools of said district, to the scholars attending the same whose parents or guardians may so desire; and thereupon such board of directors shall provide that the same be done; *provided*, that all other branches taught in said school or schools shall be taught in the English language; *provided, further*, that the person employed in teaching the said branches shall satisfy the county superintendent of his ability and qualifications, and receive from him a certificate to that effect.

Electors may
direct what
languages
taught.
Same.

SEC. 1764. The Bible shall not be excluded from any school or institution in this state, nor shall any pupil be required to read it contrary to the wishes of his parent or guardian.

Bible.
R. § 2119.

COUNTY SUPERINTENDENT.

SEC. 1765. The county superintendent shall not hold any office in, or be a member of the board of directors of a district township or independent district, or of the board of supervisors during the time of his incumbency.

Cannot hold
another office.

SEC. 1766. On the last Saturday of each month, the county superintendent shall meet all persons desirous of passing an examination, and for the transaction of other business within his jurisdiction, in some suitable room provided for that purpose by the board of supervisors at the county seat, at which time he shall examine all such applicants for examination as to their competency and ability to teach orthography, reading, writing, arithmetic, geography, English grammar, physiology, and history of the United States; and in making such examination he may, at his option, call to his aid one or more assistants. Teachers exclusively teaching music, drawing, penmanship, book-keeping, German or other language, shall not be required to be examined except in reference to such special branch, and in such cases it shall not be lawful to employ them to teach any branch, except such as they shall be examined upon and which shall be stated in the certificate.

County su-
perintendent
shall meet
and examine
teachers.
R. § 2066, 2068.
C. 51, § 1148.
9 G. A. ch. 172,
§ 64.
11 G. A. ch. 143,
§ 7.

[A substitute for the original section; 17th G. A., ch. 143.]

There is no authority for the superintendent charging the county for examining teachers on any other days than those here specified. See § 1769: *Farrell v. Webster Co.*, 49-245.

Give certificate.
R. § 2067.
9 G. A. ch. 172,
§ 65.

SEC. 1767. If the examination is satisfactory, and the superintendent is satisfied that the respective applicants possess a good

moral character, and the essential qualifications for governing and instructing children and youth, he shall give them a certificate to that effect, for a term not exceeding one year.

It is discretionary with the superintendent to grant a certificate, and he cannot be compelled to do so by mandamus: *Bailey v. Ewart*, 52-111.

SEC. 1768. Any school officer or other person shall be permitted to be present at the examination; and the superintendent shall make a record of the name, residence, age, and date of examination of all persons so examined, distinguishing between those to whom he issued certificates, and those rejected.

Examination: public record made.
Same, § 66.

Normal Insti-
tute.

Superintend-
ent to transmit
money.
Institute fund.

Board super-
visors may
make appro-
priation.
Disburse-
ments of fund.

May appoint
deputy.
R. § 2069.
9 G. A. ch. 172,
§ 68.

May revoke
certificate.
Same, § 69.
R. § 2070.
11 G. A. ch. 133,
§ 2.

Make report to
superintendent
of public in-
struction.
R. § 2071.
9 G. A. ch. 172,
§ 70.
11 G. A. ch. 143,
§ 12.

SEC. 1769. The county superintendent shall hold, annually, a normal institute for the instruction of teachers and those who may desire to teach, and with the concurrence of the superintendent of public instruction, procure such assistance as may be necessary to conduct the same, at such time as the schools in the county are generally closed. To defray the expenses of said institute, he shall require the payment of a registration fee of one dollar from each person attending the normal institutes, and shall also require the payment, in all cases, of one dollar from every applicant for a certificate. He shall monthly, and at the close of each institute, transmit to the county treasurer all moneys so received, including the state appropriation for institutes, to be designated the "institute fund," together with a report of the name of each person so contributing, and the amount. The board of supervisors may appropriate such additional sum as may by them be deemed necessary for the further support of such institute. All disbursements of the institute fund shall be upon the order of the county superintendent; and no order shall be drawn except for bills presented to the county superintendent and approved by him for services rendered, or expenses incurred, in connection with the normal institute.

[As amended by 15th G. A., ch. 57, and 17th G. A., ch. 54.]

SEC. 1770. If, for any cause, the county superintendent is unable to attend to his official duties, he shall appoint a deputy to perform them in his stead, except visiting schools and trying appeals.

SEC. 1771. The superintendent may revoke the certificate of any teacher in the county which was given by the superintendent thereof, for any reason which would have justified the withholding thereof when the same was given, after an investigation of the facts in the case, of which investigation the teacher shall have personal notice, and he shall be permitted to be present and make his defense.

The superintendent cannot, by injunction, restrain a teacher whose certificate he has revoked, from teaching school, nor the officers from paying

for such services; but it seems a resident of the district might do so: *Perkins v. Wolf*, 17-228.

SEC. 1772. On the first Tuesday of October of each year, he shall make a report to the superintendent of public instruction, containing a full abstract of the reports made to him by the respective district secretaries, and such other matters as he shall be directed to report by said superintendent, and as he himself may

deem essential in exhibiting the true condition of the schools under his charge; and he shall, at the same time, file with the county auditor a statement of the number of persons between the ages of five and twenty-one years in each school district in his county.

SEC. 1773. Should he fail to make either of the reports required in the last section, he shall forfeit to the school fund of his county the sum of fifty dollars, and shall, besides, be liable for all damages caused by such neglect. Penalty for failure.
R. § 2072.
9 G. A. ch. 172,
§ 71.

SEC. 1774. He shall at all times conform to the instructions of the superintendent of public instruction, as to matters within the jurisdiction of the said superintendent. He shall serve as the organ of communication between the superintendent and township or district authorities. He shall transmit to the townships, districts, or teachers, all blanks, circulars, and other communications which are to them directed; he shall visit each school in his county at least once in each term, and shall spend at least one-half day in each visit. Must conform to instructions:
visit schools.
R. § 2073.
Same, § 72.
10 G. A. ch. 102,
§ 4.

SEC. 1775. He shall report on the first Tuesday of October of each year to the superintendent of the Iowa college for the blind the name, age, residence, and post-office address of every person blind to such an extent as to be unable to acquire an education in the common schools, and who resides in the county in which he is superintendent, and also to the superintendent of the Iowa institution for the deaf and dumb, the name, age, and post-office address of every deaf and dumb person between the ages of five and twenty-one who resides within his county, including all such persons as may be deaf to such an extent as to be unable to acquire an education in the common schools. Report to superintendents of colleges for the blind and deaf and dumb.
13 G. A. ch. 31.
14 G. A. ch. 114,
§ 1.

SEC. 1776. The county superintendent shall receive from the county treasurer the sum of three dollars per day for every day necessarily engaged in the performance of official duties, and also the necessary stationery, and postage for the use of his office, and he shall be entitled to such additional compensation as the board of supervisors may allow; *provided*, that he shall first file a sworn statement of the time he has been employed in his official duties with the county auditor. Compensation.
R. § 2074.
9 G. A. ch. 172,
§ 73.
11 G. A. ch. 143,
§ 8.

The sworn statement of the superintendent is not conclusive upon the board, and it cannot be compelled by mandamus to allow the amount so shown to be due: *Bean v. Board of Supervisors, etc.*, 51-53.

TAXES.

SEC. 1777. The board of directors shall, at their regular meeting in March of each year, or at a special meeting convened for that purpose, between the time designated for such regular meeting and the third Monday in May, estimate the amount required for the contingent fund, and also such sum as may be required for the teachers' fund, in addition to the amount received from the semi-annual apportionment, as shown by the notice from the county auditor, to support the schools of the district for the time required by law for the current year; and shall cause the secretary to certify the same, together with the amount voted for school-house purposes, within five days thereafter to the board of supervisors, who shall, at the time of levying taxes for county purposes, Board of directors to estimate amount required for contingent and teachers' funds.
R. §§ 2037, 2044.
9 G. A. ch. 172,
§ 31. 40.
11 G. A. ch. 143,
§ 14.
14 G. A. ch. 132.

subject to the provisions of section seventeen hundred and eighty of this chapter, levy the per centum necessary to raise the sum thus certified upon the property of the district township, which shall be collected and paid over as are other district taxes.

The directors are only to determine and certify what amount of contingent fund is necessary to meet contracts which they are authorized to make; but they cannot include therein an amount to meet a contract for apparatus for which they are not authorized to contract any debt: *Manning v. Dist. T'p. of Van Buren*, 28-332.

The duty of the board of supervisors to levy the tax so certified, is purely ministerial. When each of two districts claims certain territory, and asks a levy accordingly, the board cannot investigate as to the legality of organization, etc., but

must make the levy asked by the one first taking steps to organize: *Ind. Dist. of Sheldon v. The Board, etc.*, of *Sioux Co.*, 51-658.

The board of directors, and not the electors, are authorized to fix the rates to be levied for the teachers' and contingent fund. Action of the latter in such matter is void: *C. R. & M. R. R. Co. v. Carroll Co.*, 41-153, 179.

A stock of merchandise located within a district should be taxed there for school purposes, although the owner resides in a different district: *Ament v. Humphrey*, 3 Gr., 255; *Lemp v. Hastings*, 4 Gr., 448.

Apportion school-house tax.
R. 2 2033-4,
2037, 2088.
9 G. A. ch. 172,
§ 17, 80.
11 G. A. ch. 143,
§ 4, 5.
12 G. A. ch. 183.

Excess

Limitation.

SEC. 1778. They shall apportion any tax voted by the district township meeting for school-house fund, among the several sub-districts in such a manner as justice and equity may require, taking as the basis of such apportionment the respective amounts previously levied upon said sub-districts for the use of such fund; provided, that if the electors of one or more sub-districts at their last annual meeting shall have voted to raise a sum for school-house purposes greater than that granted by the electors at the last annual meeting of the district township, they shall estimate the amount of such excess on such sub-district or sub-districts, and cause the secretary to certify the same within five days thereafter to the board of supervisors, who shall, at the time of levying taxes for county purposes, levy the per-centum of such excess on the taxable property of the sub-district asking the same, provided that not more than fifteen mills on the dollar shall be levied on the taxable property of any sub-district for any one year for school-house purposes.

The duty of determining what is a just and equitable apportionment of the school-house fund rests, at least in the first instance, upon the board. They can be compelled to act, but their discretion cannot be controlled: *Cooper v. Nelson*, 38-440, 445.

The provision as to the levy of the tax by the board of supervisors is directory, and if the levy is not made at the proper time, it may be made at the time fixed for making the succeeding tax levy: *Perrin v. Benson*, 49-325.

Board of super-visors to levy tax.
R. 2 2057, 2069.
9 G. A. ch. 172,
§ 51.

Same: amount of levy limited.
Same, § 54.
11 G. A. ch. 21,
132.

SEC. 1779. The board of supervisors of each county, shall, at the time of levying the taxes for county purposes, levy a tax for the support of schools within the county of not less than one mill, nor more than three mills on the dollar, on the assessed value of all the real and personal property within the county, which shall be collected by the county treasurer at the time and in the same manner as state and county taxes are collected, except that it shall be receivable only in cash.

SEC. 1780. They shall also levy at the same time, the district school tax certified to them from time to time by the respective district secretaries; provided, that the amount levied for school-

house fund shall not exceed ten mills on the dollar on the property of any district, and the amount levied for contingent fund shall not exceed five dollars per pupil, and the amount raised for teachers' fund, including the amount received from the semi-annual apportionment, shall not exceed fifteen dollars per pupil for each pupil residing in the district, as shown by the last report of the county superintendent. And if the amount certified to the board of supervisors exceeds this limit, they shall levy only to the amount limited; *provided*, that they may levy seventy-five dollars for contingent fund, and two hundred and seventy dollars, including the amount received for the semi-annual apportionment, for the teachers' fund for each sub-district.

The limit of ten mills on the dollar includes the tax to pay judgments, as provided in § 1787, and that section does not authorize the levying of a tax beyond that limit: *Sterling, etc., Co. v. Harvey*, 45-4-6.

Where a new township was formed in March and a tax levied therein,

held, that in the absence of proof that said tax exceeded the limit here imposed, it was legal, although the report of the county superintendent, being made before the creation of the township, did not show the number of pupils therein: *M. & St. P. R. Co. v. County of Kossuth*, 41-57, 66.

[Fifteenth General Assembly, Chapter 67.]

SEC. 1. All school districts lying in two adjoining counties shall have the right to vote mills instead of specific sums for school purposes.

School districts in adjoining counties.

COUNTY AUDITOR.

SEC. 1781. The county auditor shall, on the first Monday in April and the fourth Monday in September of each year, apportion the county school tax, together with the interest of the permanent school fund to which his county is entitled, and all other money in the hands of the county treasurer belonging in common to the schools of his county and not included in any previous apportionment, among the several sub-districts therein, in proportion to the number of persons between five and twenty-one years of age, as shown by the report of the county superintendent filed with him for the year immediately preceding.

County auditor to apportion taxes and interest on school fund.
R. § 2060.
9 G. A. ch. 172, § 55.

SEC. 1782. He shall immediately notify the president of each school district of the sum to which his district is entitled by said apportionment, and shall issue his warrant for the same to accompany said notice, which warrant shall be also signed by the president and countersigned by the secretary of the district in whose favor the same is drawn; and shall authorize the district treasurer to draw the amount due said district from the county treasurer; and the secretary shall charge the treasurer of the district with all warrants drawn in his favor, and credit him with all warrants drawn on the funds in his hands, keeping separate accounts with each fund.

Notify president of each school district of same.
R. § 2061.
Same, § 56.

SEC. 1783. He shall forward to the superintendent of public instruction, a certificate of the election or appointment and qualification of the county superintendent; and shall, also, on the second Monday in February and August of each year, make out and transmit to the auditor of state, in accordance with such form as said auditor may prescribe, a report of the interest of the

Forward certificate of election of county superintendent and report to auditor of state.
Same, § 57.

school fund then in the hands of the county treasurer, and not included in any previous apportionment; and also the amount of said interest remaining unpaid.

COUNTY TREASURER.

SEC. 1784. The county treasurer shall, on the first Monday in April of each year, pay over to the treasurer of the district the amount of all school district tax which shall have been collected, and shall render him a statement of the amount uncollected, and shall pay over the amount in his hand quarterly thereafter. He shall also keep the amount of tax levied for school-house purposes, separate in each sub-district, where such levy has been made directly upon the property of the sub-district making the application, and shall pay over the same quarterly to the township treasurer for the benefit of such sub-district. He shall, in all counties wherein independent districts are organized, keep a separate account with said independent districts, in which the receipts shall be duly entered, which books shall at all times be open to the inspection and examination of the district board of directors, and shall pay over to the said independent districts the amount of school taxes in his possession on the order of the board, on the first day of each and every month.

SEC. 1785. On the first day of each quarter, the county treasurer shall give notice to the president of the school board of each township in his county of the amount collected for each fund; and the president of each board shall draw his warrant, countersigned by the secretary, upon the county treasurer for such amount, who shall pay the amount of such taxes to the treasurers of the several school boards only on such warrants.

MISCELLANEOUS.

SEC. 1786. All fines and penalties collected from a school district officer by virtue of any of the provisions of this chapter, shall inure to the benefit of that particular district. Those collected from any member of the board of directors, shall belong to the district township, and those collected from county officers, to the county. In the two former cases, suit shall be brought in the name of the district township; in the latter, in the name of the county, and by the district attorney. The amount in each case shall be added to the fund next to be applied by the recipient for the use of common schools.

Judgments:
how paid.
R. § 2095.
Same, § 79.

SEC. 1787. When a judgment has been obtained against a school district, the board of directors shall pay off and satisfy the same from the proper fund, by an order on the treasurer; and the district meeting at the time for voting a tax for the payment of other liabilities of the district shall provide for the payment of such order or orders.

The issuance of the order on the treasurer does not satisfy the judgment. The district is required to mandamus, to levy such tax: *Boyneton v. Dist. T'p of Newton*, 34-10.

The order issued to pay off a judgment stands on the same footing with other orders in respect to payment under §1748. The holder cannot insist on payment, to the exclusion of other creditors of the same fund: *Chase v. Morrison*, 40-620.

That the board cannot accurately

specify the amount which should be paid from each fund is no excuse for not issuing orders in payment of a judgment: *Dist. T'p of Coon v Board of Directors, etc.*, 52-237.

This section does not authorize the levv of a tax in excess of the ten mill limit; See § 1780 and notes.

SEC. 1788. In case a school district has borrowed money of the school fund, the board of supervisors shall levy such tax, not exceeding five mills on the dollar in any one year, on the taxable property of the district as constituted at the time of making such loan, as may be necessary to pay the annual interest on said loan, and the principal when the same falls due, unless the board of supervisors shall see proper to extend the time of said loan.

SEC. 1789. No district township or sub-district meeting shall organize earlier than nine o'clock A. M., nor adjourn before twelve o'clock M., and in all independent districts having a population of three hundred and upward, the polls shall remain open from nine o'clock A. M. to four o'clock P. M.

Where an election is not ordered and held during the hour specified, note to § 1719.

SEC. 1790. Any school director, or director elect, is authorized to administer to any school director elect the official oath required by law, and said official oath may be taken on or before the third Monday in March following the election of directors.

SEC. 1791. When any school officer is superceded by election or otherwise, he shall immediately deliver to his successor in office, all books, papers, and moneys pertaining to his office, taking a receipt therefor; and every such officer who shall refuse to do so, or who shall wilfully mutilate or destroy any such books or papers, or any part thereof, or shall misapply any moneys entrusted to him by virtue of his office, shall be liable to the provisions of the general statutes for the punishment of such offense.

SEC. 1792. Nothing in this chapter shall be so construed as to give the board of directors of a district township jurisdiction over any territory included within the limits of any independent district.

SEC. 1793. Children residing in one district may attend school in another in the same or adjoining county or township, on such terms as may be agreed upon by the respective boards of directors; but in case no such agreement is made, they may attend school in any such adjoining district, with the consent of the county superintendent of the county where said pupil resides and the board of directors of said adjoining district, when they reside nearer the school in said district, and one and a half miles or more, by the nearest traveled highway, from any school in their own. The board of directors of the township, in which such children reside, shall be notified in writing, and the district in which they reside shall pay to the district in which they attend school, the average tuition of said children per week, and an average proportion of the contingent expenses of said district where they attend school; and in case of refusal so to do, the secretary shall file the account for said tuition and contingent expenses, certified to by the pres-

Money borrowed of school fund: how paid.
R. § 2092.
Same, § 80.

Hours of meeting and adjourning.
Same, § 81.

v'd: *Dis., T'p of Hesper v. Ind.*
Dist. of Burr Oak, 34-306, and see note to § 1719.

Oath: administered to each other.

Deliver money, books, etc., to successor: penalty for failure.
R. § 2080.
9 G. A. ch. 172, § 82.

Jurisdiction.
R. § 2083.
Same, § 83.

Children may attend school in adjoining district.
R. § 2024.
C. 51, § 1143.
9 G. A. ch. 172, § 13.

Tuition.

ident of his board, with the county auditor of the county, in which said children reside, and the said county auditor shall at the time of making the next semi-annual apportionment thereafter, deduct the amount so certified, from the sum apportioned to the district in which said children reside, and cause it to be paid over to the district in which they have attended school.

[A substitute for the original section, 16th G. A., ch. 64, as amended by 17th G. A., ch. 41.]

When a district fails to provide school for the period prescribed in § 1727, children residing therein may attend school in another district as here provided, and the district where they reside will be liable for their tuition; and where, upon being notified in writing, the directors of the

district where the children resided, at a meeting called to consider the question, determined not to pay such tuition, *held*, that demand on them before filing the account with the auditor was unnecessary: *Dist. T'p of Horton v. Dist T'p of Ocheyedan*, 49-231.

Residence of pupils.
9 G. A. ch. 172, § 14.

SEC. 1794. Pupils who are actual residents of a district shall be permitted to attend school in the same, regardless of the time when they acquired such residence, whether before or after the enumeration, or of the residence of their parents or guardians; but pupils who are sojourning temporarily in one district, while their actual residence is in another, and to whom the last preceding section is not applicable, may attend school upon such terms as the board of directors may deem just and equitable.

Pupils: where attend school.
Same, § 15.

SEC. 1795. Pupils may attend school in any sub-district of the district township in which they reside with the consent of the sub-director of such sub-district, and of the sub-director of the sub-district in which such pupils reside.

Divide townships.
Same, § 29.

SEC. 1796. The board of directors shall, at their regular meeting in September, or at any special meeting called thereafter for that purpose, divide their townships into sub-districts, such as justice, equity, and the interests of the people require; and may make such alterations of the boundaries of sub-districts heretofore formed, as may be deemed necessary; and shall designate such sub-districts, and all subsequent alterations, in a distinct and legible manner, upon a plat of the district provided for that purpose; and shall cause a written description of the same to be recorded in the district records, a copy of which shall be delivered by the secretary to the county treasurer, and also to the county auditor, who shall record the same in his office; *provided*, that the boundaries of sub-districts shall conform to the lines of congressional divisions of land; and that the formation and alteration of sub-districts as contemplated in this section, shall not take effect until the next sub-district election thereafter, at which election a sub-director shall be elected for the new sub-district.

Where an election to determine whether the sub-districts of a district township should be made independent districts under §§ 1815-1820, was ordered, and before it was held, a new sub-district was formed, *held*, that the subsequent election at which

the sub-districts were constituted independent districts applied also to the new district, although it had not yet elected a director: *Ind. Sch. Dist. No. 8, v. Ind. Sch. Dist. of Burr Oak*, 48-157.

Where streams or other obstacles interfere.
11 G. A. ch. 143, § 16.
13 G. A. ch. 94.

SEC. 1797. In cases where, by reason of streams or other natural obstacles, any portion of the inhabitants of any school district cannot, in the opinion of the county superintendent, with

reasonable facility enjoy the advantages of any school in their township, the said county superintendent, with the consent of the board of directors of such district as may be affected thereby, may attach such part of said township to an adjoining township, and the order therefor shall be transmitted to the secretary of each district, and be by him recorded in his records, and the proper entry made on his plat of the district.

SEC. 1798. In all cases where territory has been or may be set into an adjoining county or township, or attached to any independent school district in any adjoining county or township for school purposes, such territory may be restored by the concurrence of the respective boards of directors; but on the written application of two-thirds of the electors residing upon the territory within such township or independent district in which the school-house is not situated, the said boards shall restore the territory to the district to which it geographically belongs.

[A substitute for the original section; 18th G. A., ch. 111.]

If one of the townships has no district board, this restoration cannot even on the written application pro-

Restoration of
territory.
¹⁴ G. A. ch. 125.
¹⁵ G. A. ch. 94.

vided for, the concurrence of the boards is necessary, though they have no discretion: *Ind. Dist. of Fairview v. Durland*, 45-53.

SEC. 1799. The boundary lines of a civil township shall not be changed by the board of supervisors of any county, so as to divide any school district by changing the boundary lines thereof, except when a majority of the voters of such district shall petition therefor; provided, however, that this shall not prevent the change of the boundary lines of any civil township, when such change is made by adopting the lines of congressional townships.

For similar provision as to dividing school districts, see § 379.

Township lines
cannot be so
changed as to
divide district.
¹⁴ G. A. ch. 122.

INDEPENDENT DISTRICTS.

SEC. 1800. Any city, town or village containing not less than two hundred inhabitants within its limits, may be constituted a separate school district and territory contiguous to such city, town or village may be included with it as a part of said separate district in the manner hereinafter provided. The village herein mentioned shall be understood to be a collection of inhabitants residing within the limits of a town plat and not organized into a city or incorporated town.

[A substitute for the original section; 18th G. A., ch. 139.]

It is a prerequisite that there should be the specified number of inhabitants, and that matter may be inquired into by *quo warranto*: *The State v. Ind. Sch. Dist. of Carbon-dale*, 29-264.

The independent district may be formed from territory lying in adjoining townships, either in the same or different counties, and no concurrent action of the school authorities of the two townships is necessary: *Ind. Sch. Dist. of Granville v. Board*

of Supervisors, etc., 25-305; *Dist. T'p of Union v. Ind. Dist. of Greene*, 41-30.

This section is permissive, not mandatory. It is not essential that the boundaries of the city and the school district should coincide, and the extension of the limits of a city does not have the effect, *ipso facto*, to enlarge the limits of the school district before existing: *The State v. Ind. Sch. Dist. No. 6*, 46-425.

SEC. 1801. At the written request of any ten legal voters residing in such city or town, the board of directors of the district township shall establish the boundaries of the contemplated school district, including such contiguous territory as may best subserve the convenience of the people for school purposes, and shall give at least ten days' previous notice of the time and place of meeting of the electors residing in said district, by posting written notices in at least five conspicuous places therein; at which meeting the said electors shall vote by ballot for or against a separate organization.

This election must be conducted, as to the time of opening and closing the polls, etc., according to the provisions of § 1789, and if not so conducted the proceedings will be void: *Dist. T'p of Hesper v. Ind. Dist. of Burr Oak*, 34-306.

Where the question of a separate organization was submitted only to the voters *within the city*, and not to those within the territory included in the contemplated district but *outside*

of the city, the election was held void, although the majority in the city was greater than the total number of voters in such other territory: *Fort Dodge, etc., Dist. v. Dist. T'p of Waukansa*, 17-85.

Where territory is claimed as included in each of two districts, the one first taking steps to organize is entitled to it: *Ind. Dist. of Sheldon v. Board, etc., of Sioux Co.*, 51-638.

**Election of
directors:
organization
of board,**
R. & 2099, 2100,
2106,
9 G. A. ch. 172,
§ 86.
12 G. A. ch. 28,
§ 2.
13 G. A. ch. 8,
§ 1.
14 G. A. ch. 76,
§ 1.

**Secretary and
treasurer to be
chosen in Sep-
tember.**

SEC. 1802. Should a majority of votes be cast in favor of such separate organization, the board of directors of the district township shall give similar notice of a meeting of the electors for the election of six directors. Two of these directors shall hold their office until the first annual meeting after their election, and until their successors are elected and qualified, two until the second, and two until the third annual meeting thereafter, their respective terms of office to be determined by lot. The six directors shall constitute a board of directors for the district, and they shall, at their first regular meeting in each year, elect a president from their own number, and at their meeting on the third Monday of September in each year a secretary and treasurer, to be chosen outside of the board. *Provided*, that in all independent districts having a population of less than five hundred there shall be three directors elected, who shall organize by electing a president from their own number, also a secretary, who may or may not be a member of the board, and a treasurer who shall not be a member of the board. *And provided further*, that in all independent districts already organized the terms of office of such directors as may have been chosen previous to the taking effect of this section for two or three years shall not be interfered with by its passage.

[A substitute for the original section, 15th G. A. ch. 27, as amended by 18th G. A., ch. 143, repealing 17th G. A. ch. 113.]

The treasurer is an officer of the district, and service of notice upon him will be good, under § 2612: *Kennedy v. Ind. Sch. Dist. of Derby Grange*, 48-189.

Meeting for.
9 G. A. ch. 172,
§ 87.

**When organ-
ization com-
pleted: dispo-
sition of taxes.**
11 G. A. ch. 143,
§ 11.

SEC. 1803. Said meeting for the first election of directors shall organize by appointing a president and secretary, who shall act as judges of the election and issue a certificate of election to the person elected.

SEC. 1804. The organization of such independent district shall be completed on or before the first day of August of the year in which said organization is attempted, and when such organization is thus completed, all taxes levied by the board

of directors of the district township of which the independent district formed a part in that year, shall be void so far as the property within the limits of the independent district is concerned; and the board of directors of such independent district shall levy all necessary taxes for school purposes as provided by law for that year at a meeting called for that purpose, at any time before the third Monday of August of that year, which shall be certified to the board of supervisors on or before the first Monday of September, and said board of supervisors shall levy said tax at the time and in the manner that school taxes are required to be levied in other districts.

Whether the organization of an independent district will render void taxes levied prior to such organization, to pay debts for the erection of a school-house therein, *quare*, but

such organization cannot prejudice the rights of a party having a valid claim against the whole district prior to such organization: *Stevenson v. Dist. T'p of Summit*, 35-462.

SEC. 1805. In case such district is formed of parts of two or more civil townships in the same or adjoining counties, the duty of giving the notice shall devolve upon the board of directors of the township in which a majority of the legal voters of the contemplated district reside.

SEC. 1806. Said district may have as many schools, and be divided into such wards or other sub-divisions for school purposes, as the board of directors may deem proper; and shall be governed by the laws enacted for the regulation of district townships, so far as the same may be applicable.

Contracts which the directors are authorized to make, will be binding upon the district, although executed by them individually and not while acting as a board. Their powers, etc., are the same as those of a sub-director under § 1753: *Athearn v.*

Ind. Dist. of Millersburg, 33-105.
The directors may authorize the teaching of music and contract for the purchase of an organ out of any unappropriated funds on hand: *Bellmeyer v. Ind. Dist. of Marshalltown*, 44-564.

SEC. 1807. It shall be lawful for the electors of any independent district, at the annual meeting of such district, to vote a tax, not exceeding ten mills on the dollar in any one year, on the taxable property of such district, as the meeting may deem sufficient for the purchase of grounds and the construction of the necessary school-houses for the use of such independent district, and for the payment of any debts contracted for the erection of such school-houses, and for procuring a library and apparatus for the use of the schools of such independent district.

Where a levy of a three per cent. tax was made, it was held valid to the extent of one per cent. and

School-house tax voted for by electors.

10 G. A. ch. 57.

SEC. 1808. The annual meeting of all independent districts shall be held on the second Monday in March for the transaction of the business of the district, and for the election by ballot of two directors, as the successors of the two whose term expires, who shall continue in office for three years; and the president, secretary, and one of the directors then in office shall act as judges of the election, and shall issue certificates of election to the persons elected for the ensuing term; *provided*, that in all independent districts, having a population of less than five hundred, there shall

Annual meeting.
9 G. A. ch. 172,
990.
13 G. A. ch. 8,
35.
14 G. A. ch. 70.

Tie vote. be elected, annually, one director, who shall continue in office for three years. In cases of a tie vote in the election of director or directors, the secretary shall notify them to appear at the regular meeting of the board on the third Monday in March to determine their election by lot before one or more members of the board elected, and the certificate of election shall be given accordingly. Should either party fail to appear or take part in the lot, the secretary shall draw for him.

[As amended by 18th G. A., ch. 7, § 2, adding the provision in regard to a tie vote.]

[Eighteenth General Assembly, Chapter 8.]

Election precincts. SEC. 1. Independent school districts having a population of not less than fifteen thousand inhabitants shall be divided into not less than three, nor more than six, election precincts, in each of which a poll shall be held at a convenient place, to be appointed by the board of directors, for the reception of the ballots of the electors residing in such precinct at said election.

Questions submitted to electors. SEC. 2. The board of directors shall provide for the submission of all questions relating to the powers reserved to the electors under section one thousand eight hundred and seven of the code, which questions shall be decided by ballot, returns to be made on questions submitted as hereinafter provided.

Registration of voters. SEC. 3. A register of the electors residing in each precinct shall be prepared by the board of directors from the register of the electors for any city, town, or township, which is in whole or in part included within such independent school district; and for that purpose, a copy of such register of electors shall be furnished by the clerk of each such city, town, or township, to the board of directors. Said board shall, in each year, before the annual election for directors, revise and correct such school election registers by comparison thereof with the last register of elections for such cities, towns, and townships; and the register provided for by this section shall have the same force and effect at elections held under this act and in respect to the reception of votes at said elections as the register of elections has by law at general elections.

Notice of election. SEC. 4. Notice of every election under this act shall be given in each district in which the same is to be held, by the secretary thereof, by posting up the same in three public places in said district, and by publication in a newspaper published therein, for two weeks preceding such election; such notice shall also state the respective elective precincts and the polling places in each precinct.

Judges and clerks of election: method of conducting. SEC. 5. The board of directors shall appoint one of their own number and another elector of the district to act as judges of election, and a clerk for each polling place, who shall be sworn as provided by section six hundred and nine of the code, in case of general elections. The polls shall be opened from 9 o'clock A. M. to 6 o'clock P. M. If either of the judges or clerk fail to attend, his place may be filled by the others, by appointing an elector attending in his place, and, if all fail to attend in time, or refuse to serve or be sworn, the electors present shall choose two judges and a clerk from the electors attending. A ballot box and the

Opening and closing of polls: vacancies.

necessary poll book shall be provided by the board of directors for each precinct, and the election shall be conducted in the same manner, and under the same rules and regulations, so far as applicable, as, or [are] provided by chapter three, of title five of the code for general elections.

SEC. 6. The judges of election and clerk in each precinct shall canvass the vote therein, and shall, as soon as possible, make out, sign and return, to the secretary of the district, a certificate showing the whole number of votes cast in such precinct, and the number of votes in favor of each person voted for, and questions submitted. The board of directors shall meet on the next Monday after the election and canvass the returns and ascertain the result of the election, the whole number of votes cast, and the number in favor of each person voted for shall be entered in their record, and the persons respectively receiving the highest two numbers of votes shall be declared elected, and all questions submitted, receiving a majority of votes cast, shall be recorded as carried. The secretary shall issue to each person so elected a certificate of his election.

SEC. 7. All acts and parts of acts inconsistent with this act are hereby repealed.

SEC. 1809. When an independent district has been formed out of a civil township, or townships, as herein contemplated, the remainder of such township, or of each of such townships, as the case may be, shall constitute a district township as provided in section seventeen hundred and thirteen of this chapter, and the boundaries between such district township and independent district may be changed, or the independent district abandoned at any time, with the concurrence of their respective boards of directors.

SEC. 1810. In case an independent district embraces a part or the whole of a civil township which has no separate district township organization, upon the written application of two-thirds of the electors residing upon the territory of such independent district and within such civil township to the board of directors, they shall set off such territory, whether provided with school-houses or not, to be organized as a district township in the manner provided for such organization when a new civil township is formed.

SEC. 1811. Independent districts located contiguous to each other, may unite and form one and the same independent district, in the manner following: At the written request of any ten legal voters residing in each of said independent districts, their respective boards of directors shall require their secretaries to give at least ten days' notice of the time and place for a meeting of the electors residing in such districts, by posting written notices in at least five public places in each of said districts, at which meetings the said electors shall vote by ballot for or against a consolidated organization of said independent districts; and if a majority of the votes cast at the election in each district, shall be in favor of uniting said districts, then the secretaries shall give similar notice of a meeting of the electors as provided for by the law for the organization of independent districts. The independent district thus consolidated shall be completed, and its directors

governed by the same provisions of the law which apply to other independent districts.

SEC. 1812. Where, under the school laws of the state heretofore in force for the convenience and accommodation of the people, school districts where formed of portions of two counties of territory lying contiguous to each other, at the written request of five legal voters residing in portions of said territory in each county, the board of directors of the district township to which such territory belongs, having a majority of the legal voters, shall fix the boundaries of an independent school district composed of such sections of land, or portions thereof, as may be described in the petition therefor, and shall give at least ten days' notice of the submission of the question of the formation of said independent district, at a special election for said purpose, specifying the boundaries of the district, the time and place of the meeting of the electors for such election, at which meeting the electors in the contemplated district shall vote by ballot for or against the separate organization. Should a majority of the votes be cast in favor of such separate organization, the said board of directors shall proceed by ballot to elect officers in the manner provided by law, and organize such independent district.

These provisions do not apply in case of the formation of an independent district out of contiguous territory situated in different counties, under § 1800 : *Dist. T'p. of Union v. Ind. Dist. of Greene*, 41-30.

SEC. 1813. The boards of directors of the several independent school districts are hereby required to publish, two weeks before the annual school election in such district, by publication in one or more newspapers, if any are published in such district, or by posting up in writing in not less than three conspicuous places in such independent district, a detailed and specific statement of the receipts and disbursements of all funds expended for school and building purposes for the year preceding such annual election. And the said boards of directors shall also, at the same time, publish in detail an estimate of the several amounts which, in the judgment of such board, are necessary to maintain the schools in such district for the next succeeding school year; and failure to comply with the provisions of this section shall make each director liable to a penalty of ten dollars.

SEC. 1814. Township districts may be consolidated and organized as independent districts, in the following manner: Whenever the board of directors of any existing district township shall deem the same advisable, and also whenever requested to do so by a petition signed by one-third of the voters of the district township, the board shall submit to the voters of said district township, at a regular election, or one called for the purpose, the question of consolidation, at which election the voters of the district township shall vote for or against consolidation. If a majority of votes shall be in favor of such consolidated organization, such district township shall organize on the second Monday of March following as an independent district; *provided*, that in townships which have been divided into independent districts, the duties in this section devolving on the board of directors shall be performed by the trustees of the township to whom the petition shall in such cases be addressed; *and provided further*, that nothing in this

School districts
lying in two
counties may
be formed into
independent
district.

14 G. A. ch. 187.

Detailed state-
ment of re-
ceipts and dis-
bursements
published.

14 G. A. ch. 46.

Districts con-
solidated and
organized as
independent
districts.

section shall be construed to affect independent districts composed wholly or mainly of cities or incorporated towns. Independent districts may in like manner change their boundaries so as to form any number of districts less than the number of districts existing at the time such change is asked for, and such changes shall be specified in the notices for a vote thereon.

Considered: *Ind. Dist. of Fairview v. Durland*, 45-53, 56.

SEC. 1815. The independent districts of a civil township may be constituted a district township in the manner hereinafter provided. Ind. districts may become dist. tp.

[As amended, see note to § 1820.]

As bearing upon the original section, see *The State v. Ind. Sch. Dist.* | of *Carbondale*. 29-264.

SEC. 1816. At the written request of one-third of the legal voters residing in any civil township, which is divided into independent districts, the township trustees shall call a meeting of the qualified electors of such civil township at the usual place of holding the township election, by giving at least ten days' notice thereof, by posting three written notices in each independent district in the township, and by publication in a newspaper, if one be published in such township, at which meeting the said electors shall vote by ballot for or against a district township organization. Question of dist. tp. organization submitted to electors.

[As amended, see note to § 1820.]

SEC. 1817. If a majority of the votes cast at such election be in favor of such district township organization, each independent district shall become a sub-district of the district township, and shall organize as such sub-district, on the first Monday in March following, by the election of a sub-director. When dist. tp. organization is agreed to.

[As amended, see note to § 1820.]

SEC. 1818. Each sub-district so formed shall hold a meeting on the first Monday in March for the election of a sub-director, five days' notice of which meeting shall be given by the secretary of the old independent district, by posting written notices in three public places in each district, which notices shall state the hour and place of meeting. Election of sub-directors.

[As amended, see note to § 1820.]

SEC. 1819. District townships organized under the provisions of the preceding four sections shall be governed and treated in all respects as other district townships: *provided*, that nothing in this act shall be construed to affect independent districts composed wholly or mainly of cities or incorporated towns. Government of dist. townships.

[As amended, see note to § 1820.]

SEC. 1820. When any district township is organized under the provisions of the preceding five sections, the sub-directors shall organize as a board of directors, on the third Monday in March, and make an equitable settlement of the then existing assets and liabilities of the several independent districts. Meeting of board of directors.

[Sec's 1815 to 1820 inclusive, as they originally stood, provided that the sub-districts of any district township might, by vote, be organized into independent districts. By 16th G. A., ch. 155, these sections were amended so as to read as above.]

[Decisions under the original section.]

The new independent district is not liable for the debts of the original sub-district from which it is formed. Such debts, being claims against the district township, may be enforced by action against all the independent districts which have been formed out of it, and a judgment may be rendered against them jointly, which may be enforced against any one of them, leaving the question as to the apportionment of such judgment to be settled between the districts them-

selves: *Knoxville Nat'l Bank v. Ind. Dist. of Washington*, 40-612; *Ind. Sch. Dist. of Asbury v. Dist. Court of Dubuque Co.*, 48-182; *Kennedy v. Ind. Sch. Dist. of Derby Grange*, 48-189; *Dist. T'p of White Oak v. Dist. T'p of Oskaloosa*, 52-73.

When a district township is thus divided into independent districts, the old district township ceases to exist: *Dist. T'p of Knoxville v. Ind. Dist. of Liberty*, 36-220,

As to division of assets, etc., see notes to § 1715.

SUB-DIVISION OF INDEPENDENT SCHOOL DISTRICTS.

[Seventeenth General Assembly, Chapter 133.]

Manner: when allowable. SEC. 1. Any independent school district, organized under any of the laws of this state, may sub-divide for the purpose of forming two or more independent school districts, or have territory detached to be annexed with other territory, in the formation of independent district or districts; and it shall be the duty of the board of directors of said independent district to establish the boundaries of the districts so formed; the districts so formed not to contain less than four government sections of land each: this limitation shall not apply when, by reason of a river, or other obstacle, a considerable number of pupils will be accommodated by the formation of a district containing less than four sections, or where there is a city, town, or village, within said territory, of not less than one hundred inhabitants, and, in such cases, the independent districts so formed shall not contain less than two government sections of land, such sub-division to be effected in the manner provided for in sections two, three, and four of this chapter; *provided*, that where either of the districts so proposed to be formed contains less than four government sections, it shall require a majority of the votes of each of the proposed districts to authorize such sub-division.

[A substitute for the original section; 18th G. A., ch. 131.]

Election to decide question of division.

SEC. 2. At the written request of one-third of the legal voters residing in any independent school district, the board of directors of said independent district shall call a meeting of the qualified electors of the independent district, at the usual place of holding their meeting, by giving at least ten days' notice thereof by posting three notices in the independent district sought to be divided, and by publication in a newspaper, if one be published in the independent district, at which meeting the electors shall vote by ballot for or against such sub-division.

Election of directors in new districts.

SEC. 3. Should a majority of the votes cast be in favor of such sub-division, the board or boards of directors shall call a meeting in each independent district so sub-divided or formed as aforesaid, for the purpose of electing by ballot three directors, who shall hold their offices one, two and three years respectively, the length of their respective terms to be determined by lot; and but one director shall be chosen annually thereafter, who shall hold his office for three years.

Terms of office.

SEC. 4. At the meeting of the electors of each independent school district, as provided in the last section, they shall also determine by ballot the name to be given to their district, and each independent district, when so organized, shall be a body corporate, and the name so chosen shall be its corporate name; *provided*, that the board of directors of any district organized under the provisions of this act may change its name if any other district in the township shall have chosen the same name.

SEC. 5. Independent districts organized under the provisions of this act shall be governed by the laws relating to independent districts.

MAY ISSUE BONDS.

SEC. 1821. Independent school districts shall have the power and authority to borrow money for the purpose of redeeming outstanding bonds and erecting and completing school-houses, by issuing negotiable bonds of the independent district, to run any period not exceeding ten years, drawing a rate of interest not to exceed ten per centum per annum, which interest may be paid semi-annually; which said indebtedness shall be binding and obligatory on the independent district for the use of which said loan shall be made; but no district shall permit a greater outstanding indebtedness than an amount equal to five per centum of the last assessed value of the property of the district.

[As amended by 16th G. A., ch. 121, inserting the words "redeeming outstanding bonds and," in the second and third lines.]

In an action on such bonds it will be presumed until the contrary appears, that they are within the limit of indebtedness, and issued in proper manner and for proper purpose: *Mosher v. Ind. Dist. of Steam-*

boat Rock, 42-632. But if issued in excess of the limit, such bonds are void, even in the hands of an innocent holder for value: *McPherson v. Foster*, 43-48, 55.

SEC. 1822. The directors of any independent district may submit to the voters of their district at the annual or a special meeting, the question of issuing bonds as contemplated by the preceding section, giving the same notice of such meeting as is now required by law to be given for the election of officers of such districts, and the amount proposed to be raised by the sale of such bonds; which question shall be voted upon by the electors, and if a majority of all the votes cast on that question be in favor of such loan, then said board shall issue bonds to the amount voted, in denominations of not less than twenty-five dollars, nor exceeding one thousand dollars, due not more than ten years after date, and payable at the pleasure of the district at any time before due; which said bonds shall be given in the name of the independent district issuing them, and shall be signed by the president of the board and attested by the secretary and delivered to the treasurer, taking his receipt therefor, who shall negotiate said bonds at not less than their par value, and countersign the same when negotiated. The treasurer shall stand charged upon his official bond with all bonds that may be delivered to him; but any bond or bonds not negotiated may be returned by him to the board.

[As amended by 18th G. A., ch. 59, inserting in the fifteenth line, the words, "and attested by the secretary." The word "any" in the first line as in the original, is "the" in the printed code.]

SEC. 1823. If the electors of an independent school district which has issued bonds, shall, at the annual meeting in March for any year, fail to vote sufficient school-house tax to raise a sum equal to the interest on the outstanding bonds which will accrue during the then coming year, and such proportionate portion of the principal as will liquidate and pay off said bonds at maturity, then it shall be lawful for the board of such district to vote a sufficient rate on the taxable property of the district to pay such interest, and such portion of the principal as will pay said bonds in full by the time of their maturity, and shall cause the same to be certified and collected the same as other school taxes.

SEC. 1824. All school orders shall draw lawful interest after having been presented to the treasurer of the district and not paid for want of funds, which fact shall be endorsed upon the order by the treasurer.

[Eighteenth General Assembly, Chapter 51.]

SEC. 1. Any school district or district township against which judgments have been rendered prior to the passage of this act, and which such judgments remain unsatisfied, may, for the purpose of paying off such judgment indebtedness, issue negotiable bonds of such district township, upon a resolution of the board of directors of the district, running not more than ten years, and bearing a rate of interest not exceeding eight per cent. per annum, payable semi-annually, which bonds shall be signed by the president of the district and countersigned by the secretary, and shall not be disposed of for less than their par value, nor for any other purpose than that provided by this act, and such bonds shall be binding and obligatory upon the district township.

SEC. 2. It shall be the duty of the board of directors of any district township which issues bonds under this act, to provide for the payment of the same by the levy of tax therefor, in addition to the other taxes provided by law; and they are hereby required to levy such an amount each year as shall be sufficient to meet the interest on such bonds promptly as it accrues.

SEC. 3. The bonds issued under this act shall be in the name of the district township, and in substantially the same form as is by law provided for county bonds; shall be payable at the pleasure of the district township; shall be registered in the office of the county auditor; shall be numbered consecutively and redeemed in the order of their issuance.

[An act almost identical with the foregoing, but applying only to school districts, was passed in 1878, 17th G. A., ch. 132, but is omitted and the later act inserted.]

[Eighteenth General Assembly, Chapter 132.]

SEC. 1. Any independent school district or district township now or hereafter having a bonded indebtedness outstanding, is hereby authorized to issue negotiable bonds at any rate of interest not exceeding seven per cent. per annum, payable semi-annually, for the purpose of funding said indebtedness; said bonds to be issued upon a resolution of the board of directors of said district, provided that said resolution shall not be valid unless adopted by a two-thirds vote of said directors.

Tax for voted
by directors if
electors fail.
Same, § 3.

Orders to bear
lawful interest.
Same, § 4.

Bonds to fund
judgment in-
debt edness.

Levy to pay.

Form.

Funding of in-
debt edness.

SEC. 2. The treasurer of such district is hereby authorized to sell of bonds, sell the bonds provided for in this act at not less than their par value, and apply the proceeds thereof to the payment of the outstanding bonded indebtedness of the district, or he may exchange such bonds for outstanding bonds, par for par; but the bonds hereby authorized shall be issued for no other purpose than the funding of outstanding bonded indebtedness. The actual cost of the engraving and printing of such bonds to be paid for out of the contingent fund of said district.

SEC. 3. Said bonds shall run not more than ten years, and be Time to run. payable at the pleasure of the district after five years from the date of their issue; *provided*, that in order to stop interest on them, the treasurer shall give the owner of said bonds ninety days' written notice of the readiness of the district to pay and the amount it desires to pay, said notice to be directed to the post-office address of the owner of the bonds; *provided, further*, that the treasurer shall keep a record of the parties to whom he sells the bonds and their post-office, and notice sent to the address as shown by said record shall be sufficient. Notice to stop interest.

SEC. 4. Said bonds shall be in denominations of not less than Form of bond. one hundred dollars, and not more than one thousand dollars; and said bonds shall be given in the name of the independent district or district township, and signed by the president and countersigned by the secretary thereof; and the principal and interest may be made payable wherever the board of directors may by resolution determine.

SEC. 5. When said bonds are delivered to the treasurer to be negotiated, the president shall take his receipt therefor, and the treasurer shall stand charged on his official bond with the amount of the bonds so delivered to him. Treasurer to receive and account for bonds.

SEC. 6. The tax for the payment of the principal and interest Levy of tax. of said bonds shall be raised as provided in section one thousand eight hundred and twenty-three, chapter 9, title XII, of the code; *provided*, that if the district shall fail or neglect to so levy said tax, the board of supervisors of the county in which said district is located, shall upon application of the owner of said bonds, levy said tax.

SEC. 7. All acts and parts of acts in conflict with this act are Repealing clause. hereby repealed.

INDUSTRIAL EXPOSITIONS IN SCHOOLS.

[Fifteenth General Assembly, Chapter 64.]

SEC. 1. It shall be the duty of the board of directors of independent school districts, and the sub-director of each sub-district, School-directors may establish. if they should deem it expedient, under the direction of the county superintendent, to introduce and maintain an industrial exposition in connection with each school under their control within this state.

SEC. 2. These expositions shall consist of useful articles made To consist of what. by the pupils, such as samples of sewing, and cooking of all kinds, knitting, crocheting, and drawing, iron and woodwork of all kinds, from a plain box or horse-shoe to a house or steam-engine in miniature; also, all other useful articles known to the industrial world,

or that may be invented by the pupils, in connection with farm and garden products in their season, that are the results of their own toil.

Pupils to explain.

SEC. 3. The pupils [shall] be required to explain the use and method of their work, and kind and process of culture [of] farm and garden products.

Presence of parents and friends.

SEC. 4. The parents and friends of the pupils [shall] be allowed and requested to be present at said exposition.

Ornamental work.
To be held in school rooms:
how often.

SEC. 5. Ornamental work shall be encouraged when accompanied by something useful made by the same pupil.

SEC. 6. These expositions [shall] be held in the school-room upon a school-day as often as once a term, and not oftener than once a month.

CHAPTER 10.

OF SCHOOL-HOUSE SITES.

SECTION 1825. It shall be lawful for any district township, or independent district, to take and hold under the provisions contained in this chapter, so much real estate as may be necessary for, 13 G. A. ch. 124, for the location and construction of a school-house and convenient use of the school; *provided*, that the real estate so taken, otherwise than by the consent of the owner or owners, shall not exceed one acre.

Site of. Same.

SEC. 1826. The site so taken must be on some public highway, at least forty rods from any residence, the owner whereof objects to its being placed nearer, and not in any orchard, garden, or public park. But this section shall not apply to any incorporated town.

May condemn. Same, § 3.
County superintendents to appoint appraisers.

Oath of.

To assess damages.

Notice to owner.

Deposit of sum assessed.

SEC. 1827. If the owner of any such real estate refuse or neglect to grant the site on his premises, or if such owner cannot be found, the county superintendent of the county in which said real estate may be situated, shall, upon application of either party, appoint three disinterested persons of said county, unless a smaller number is agreed upon by the parties, who shall, after taking an oath to faithfully and impartially discharge the duties imposed on them by this chapter, inspect said real estate and assess the damages which said owner will sustain by appropriation of his land for the use of said house and school, said county superintendent giving to the owner of such real estate the same notice as is required for the commencement of a suit at law in the district court of the time of such assessment of damage, and make a report in writing to the county superintendent of said county, giving the amount of damages, description of land, and exact location, who shall file and preserve the same in his office. If said board shall, at any time before they enter upon said land for the purpose of building said house, deposit with the county treasurer for the use of said owner, the sum so assessed as aforesaid, they shall be thereby authorized to build said house, and maintain

the right to said premises; *provided*, that either party may have the right to appeal from such assessment of damages to the circuit court of the county where such real estate is situated, within twenty days after receiving notice that such assessment is made, which appeal shall be final; but such appeal shall not delay the prosecution of work upon said house if said board shall pay, or deposit with the county treasurer, the amount so assessed by such appraisers, and in no case shall said board be liable for costs on appeal, unless the owner of said real estate shall be adjudged a greater amount of damages than was awarded by said appraisers.

The board shall in all cases pay costs of the first assessment. Costs.

The holder of a tax certificate upon property sought to be condemned under these provisions is an "owner" in such sense that he is entitled to notice: *Cochran v. Ind. Sch. Dist. of*

Council Bluffs, 50-663.

Notice by publication is not sufficient as against a party residing in the county: *Ibid.*

SEC. 1828. The title acquired by said school districts in and to said real property, shall be for school purposes only, and in case the same should cease to be used for said purpose for the space of two years, then the title shall revert to the owner of the fee, upon the repayment by him of the principal amount paid for said land by said districts, without interest, together with the value of any improvements thereon erected by said districts; *provided*, that during the time said site is used for school purposes, the owners of the fee shall not injure or remove the timber standing and growing thereon.

For school purposes only: when title reverts.
Same, § 4.

Timber on.

CHAPTER 11.

OF APPEALS.

SECTION 1829. Any person aggrieved by any decision or order of the district board of directors, in matter of law or of fact, may, within thirty days after the rendition of such decision, or the making of such order, appeal therefrom to the county superintendent of the proper county.

This section does not clothe the county superintendent with judicial power: *School Dist., etc., of Sioux City v. Pratt*, 17-16.

Mandamus will not lie where the aggrieved party has a right of appeal under this section: *Marshall v. Sloan*, 35-445. But where a positive, official duty is enjoined by law upon school officers, which is not discretionary, an appeal as here provided is not such a plain, speedy and adequate remedy

that such duty may not be enforced by mandamus: *Benjamin v. Dist. T'p of Malaka*, 50-648.

Appeal from action of directors in apportioning the assets and liabilities of new districts under § 1715, may be taken as here provided, and the final judgment of the county superintendent enforced by action: *Ind. Sch. Dist. of Lowell v. Ind. Sch. Dist. of Duser*, 45-391.

SEC. 1830. The basis of the proceeding shall be an affidavit, filed by the party aggrieved with the county superintendent, within the time for taking the appeal.

SEC. 1831. The affidavit shall set forth the errors complained of in a plain and concise manner.

Basis of R. § 2134.

Errors stated. R. § 2135.

Superintendent to notify secretary of district: duty
of.
R. § 2136.

Parties notified.
R. § 2137.

Hearing: take testimony: administer oaths.
R. § 2138.

Appeal to superintendent of public instruction:
notice of.
R. § 2139.

No money judgment rendered: postage.
R. § 2140.

SEC. 1832. The county superintendent shall, within five days after the filing of such affidavit in his office, notify the secretary of the proper district, in writing, of the taking of such appeal. And the latter shall, within ten days after being thus notified, file in the office of the county superintendent a complete transcript of the record and proceedings relating to the decision complained of, which transcript shall be certified to be correct by the secretary.

SEC. 1833. After the filing of the transcript aforesaid in his office, he shall notify in writing all persons adversely interested of the time and place where the matter of the appeal will be heard by him.

SEC. 1834. At the time thus fixed for hearing, he shall hear testimony for either party, and for that purpose may administer oaths if necessary, and he shall make such decision as may be just and equitable, which shall be final, unless appealed from as hereinafter provided.

SEC. 1835. An appeal may be taken from the decision of the county superintendent, to the superintendent of public instruction in the same manner as provided in this chapter for taking appeals from the district board to the county superintendent, as nearly as applicable, except that he shall give thirty days' notice of the appeal to the county superintendent, and the like notice shall be given the adverse party. And the decision when made shall be final.

SEC. 1836. Nothing in this chapter shall be so construed as to authorize either the county or state superintendent to render a judgment for money, neither shall they be allowed any other compensation than is now allowed by law. All necessary postage must first be paid by the party aggrieved.

CHAPTER 12.

OF THE SCHOOL FUND.

Permanent fund: what constitutes.
R. § 1962.

SECTION 1837. The following are hereby declared to be and remain perpetual funds for common school purposes, the interest of which only can be appropriated:

1. The five per cent. upon the net proceeds of the public lands in the state of Iowa;
2. The proceeds of the sales of the five hundred thousand acres of land which were granted to the state of Iowa under the eighth section of the act of congress, passed September fourth, A. D. 1841, entitled, "an act to appropriate the proceeds of all sales of public lands, and to grant pre-emption rights;"
3. The proceeds of all sales of intestate estates which escheat to the state;
4. The proceeds of the sales of the sixteenth section in each township, or lands selected in lieu thereof.

SEC. 1838. The following are declared to be and remain temporary funds for common school purposes, to be received and appropriated annually in the same manner as the annual interest of R. § 1963. the perpetual fund:

1. All forfeitures of ten per cent. which are authorized to be made for the benefit of the school fund;
2. The proceeds of all fines collected for violations of the penal laws;
3. The proceeds of all fines collected for the non-performance of military duty;
4. The proceeds of the sales of lost goods and estrays.

See, as to fines for violations of the | § 3370.
penal laws, Const. art. 9, § 4, and |

SEC. 1839. The five per centum of the net proceeds of all sales of the public lands is hereby made payable to the state treasurer, and the state auditor shall apportion the same among the several counties, taking into consideration the amount of the permanent school fund already in possession of and steadily loaned in said counties.

SEC. 1840. Those portions of the permanent school fund enumerated in the second and fourth sub-divisions of section eighteen hundred and thirty-seven of this chapter, are hereby made payable to the county treasurer of the county in which the lands sold are situated, and the proceeds of sub-division third of said section to the treasurer of the county where said escheated estates are.

SEC. 1841. The temporary funds enumerated in section eighteen hundred and thirty-eight of this chapter, are hereby made payable to the county treasurers of the several counties in which they arise respectively, and shall be accounted for to the board of supervisors, who shall apportion the same among the several school districts of said county as provided by law.

SEC. 1842. The auditor is required to audit all losses to the school fund as provided in section three of article seven of the constitution; and, for this purpose, he shall prescribe such regulations for the conduct of officers having such funds in charge as he shall deem necessary to ascertain such losses.

SEC. 1843. Whenever any amount, not less than one thousand dollars, is audited in favor of the permanent school fund for losses of the same, whereby the state becomes indebted to said fund, the state auditor shall issue the bond or bonds of the state in favor of said fund, bearing interest at the rate of eight per cent., payable semi-annually, on the first day of January and July after the issuing of the same, and the amount required to pay the interest on said bonds, as the same becomes due, is hereby appropriated out of any revenue in the state treasury.

SEC. 1844. The state auditor shall keep the school fund accounts in books provided for that purpose, separate and distinct from the revenue books, and immediately after making the apportionment required by section sixty-six of chapter three of title two, he shall notify the auditor of each county of the sum to which his county is entitled by said apportionment, and in those cases where the counties have less of such interest than

Deficiency. they are entitled to by apportionment, he shall, by such notice, authorize the treasurer of each of such counties to transfer the amount of such deficiency from the state revenue in his hands to such interest fund, and said notice shall be filed by the treasurer and be his proper voucher to the state for the amount of said revenue so transferred. And in those cases where the counties have an excess of such interest over the amount apportioned to each, such notice shall authorize the county treasurer to transfer such excess from the interest fund to the state revenue, and such notice shall be filed and be his proper voucher for such amount of the interest fund; and such excess so transferred shall be paid into the state treasury as revenue.

Excess.

[The words between "from the interest fund," in the sixteenth line, and the words, "and such excess," etc., in the next to the last line, as they stand in the original, are omitted in the printed code.]

SALE OF LANDS.

Supervisors to authorize township trustees to sell sixteenth section. R. § 1970. SEC. 1845. The board of supervisors may, at such time as they deem best, authorize the trustees of any township where the sixteenth section, or land selected in lieu thereof, has not been sold, to lay out the same in such tracts as in their judgment will be for the best interests of the school fund, conforming, as far as the interests of said fund will permit, to the legal subdivisions of the United States surveys; and they shall appraise each tract at what they believe to be its true value, and certify to the said board of supervisors the divisions and appraisements made by them; said division and appraisement shall be approved or disapproved by said board at their first meeting after such report, and in case they disapprove the same, they may at once order another division and appraisement, should they deem it best. Where the board of supervisors approve, the county auditor shall make and keep a record of such division, appraisement, and approval.

Sale of five hundred thousand acre grant. R. § 1971. Notice of given. SEC. 1846. Whenever the board of supervisors shall offer for sale the sixteenth section, or lands selected in lieu thereof, or any portion of the same, or any part of the five hundred thousand acre grant, the county auditor shall give at least forty days' notice by written or printed notices posted in five public places in the county, two of which shall be in the township in which the land to be sold is situated; and also publish a notice of said sale for four weeks preceding the same, in a newspaper, should one be published in the county; if there is none published in said county, then in some newspaper authorized by the board of supervisors; and he shall describe the land to be sold, and state the time and place of sale; then at such time and place, or at such other time and place as the sale may be adjourned to, he shall offer to the highest bidder, subject to the provisions of this chapter, and shall sell either for cash, or one-third cash, and the balance on a credit not exceeding ten years, with interest on the same at the rate of eight per cent. per annum; said interest to be paid at the office of the county treasurer of said county, on the first day of January in each year; but in no case shall the land so offered be sold for less than its appraised value; nor shall any member of the board of supervisors, or county auditor, township trustee, or any person

Sale adjourned.

Ten years' credit.

who was engaged in the division and appraisement of said land, be, directly or indirectly, interested in the purchase thereof; and any sale made where such parties, or any of them, are so interested shall be void and of no effect.

[As amended by 18th G. A., ch. 12, § 4, changing the rate of interest.]

SEC. 1847. No school lands shall be sold for less than the minimum price of six dollars per acre, except as hereinafter provided, and in no case for less than the amount at which it has been appraised.

SEC. 1848. No school lands of any kind shall be sold until there shall be at least twenty-five legal voters resident in the congressional township in which said school land is situated, and in a fractional township of less than thirty-six sections the number of voters residing therein must have at least the same ratio to twenty-five as the number of sections, or parts of sections, in said township has to thirty-six, which fact in all cases must be shown to the satisfaction of the board of supervisors.

SEC. 1849. Where the board of supervisors of any county shall have once, at least, offered for sale any school lands in compliance with the requirements of section eighteen hundred and forty-five, and eighteen hundred and forty-six of this chapter, and are unable to sell the same for the minimum price of six dollars per acre, and, if in the opinion of said board, it is for the best interests of the school fund that the same be sold for a less price, then said board may instruct the auditor of said county to transmit by mail or otherwise to the register of the state land office, a certified copy of the proceedings of said board of supervisors in relation to the order of sale of said land, and subsequent proceedings in relation thereto, including the action of the township trustees, and the price per acre at which said land shall have been appraised, which transcript the register of the state land office shall submit to the executive council; and if a majority of said council, including the register, shall approve of the sale of said land for less than the minimum price of six dollars per acre, then the register shall certify such approval to the auditor of the county from whence said transcript came, which certificate shall be transcribed in the minute book of the board of supervisors of said county, and, thereupon, said land may again be offered and sold to the highest bidder, as provided in section eighteen hundred and forty-six of this chapter without being again appraised; but in no case under the provisions of this section, shall any school land be sold for less than one dollar and twenty-five cents per acre.

Sec. 1850. When any lands have been bid in by the state in behalf of the school fund, on execution founded on a judgment in favor of said fund, such land shall be sold in the same manner as other school lands. Whenever any such lands shall have been conveyed to the counties in which the same are situated for the use of the school fund, instead of to the state as required by law, such conveyance shall be considered valid and binding, and on the proper certificates being made as hereinbefore provided, patents shall be issued to the purchasers of said lands in like manner as in cases where the conveyances were made to the state for the use of the school fund.

SEC. 1851. When any purchaser shall pay the full amount of his purchase money at the time of purchase, or, whenever full payment shall be made for lands previously purchased belonging to the school fund, the auditor shall forthwith issue a certificate of that fact, which shall be transmitted to the state land office and entitle the purchaser to a patent which shall be issued by the governor.

SEC. 1852. In case the lands are purchased upon a partial credit as hereinbefore provided, the contract shall at once be reduced to writing, signed by the parties, and recorded in the office of the recorder, after which it shall be filed in the office of the county auditor, and during the continuance of such contract, it shall be lawful for such purchaser, his heirs, or assignees, at any time to pay the principal and interest due upon such contract, and receive a certificate of purchase as mentioned in the preceding section.

SEC. 1853. When, in the judgment of the board of supervisors, any school lands are of such a character that a sale upon partial credit would be unsafe or incompatible with the interest of the school fund, and especially in the case of timbered lands, the board of supervisors may, in their discretion, exact the whole of the purchase money in advance; or, if they sell such land upon a partial credit as hereinbefore prescribed, they shall require good collateral security for the payment of the purchase money upon which credit is given.

SEC. 1854. Whenever any purchaser of any school lands, sold under the provisions of this chapter upon a partial credit, or any person to whom a portion of the school fund has been loaned, fails to pay the interest upon the amount due the school fund from him on the first day of January, and such payment is not made within six months thereafter, then the entire amount, both of principal and interest, owing to the school fund from such person, shall be deemed to have become due, and the county auditor shall report the name of the delinquent, together with the sum total due from such delinquent, to the district attorney of his judicial district, who shall immediately commence suit for the collection of the amount thus reported. The provisions of this section, in so far as they provide for the principal owing for the purchase of school lands, or for money borrowed from the school fund becoming due and being collected at an earlier day than that stipulated in the contract upon failure to pay the interest, are hereby declared to be a part of every contract made under and by virtue of this chapter, whether expressed in such contract or not.

SEC. 1855. The provisions of the last section shall be of force, as far as applicable, to all cases where land is purchased or money borrowed from the university fund, and, in case of delinquency as provided for in said section, the treasurer of the state university shall make the report therein required to the district attorney of the district where the party so purchasing or borrowing resides, or where the real estate given as security for said purchase or loan is situated.

SEC. 1856. All school lands, the sale of which is provided for under this chapter, shall be subject to taxation from and after the execution and delivery of the contract to the purchaser.

Patent to issue when payment made.
R. § 1972.
9 G. A. ch. 148,
§ 12.

Contracts to be reduced to writing and recorded.
R. § 1973.

Supervisors may refuse to sell on credit or may exact security.
R. § 1974.

When failure is made to pay principal or interest.
R. § 1975.

Whole becomes due.

Auditor.

What deemed part of contract.
R. § 1976.

Same as to university funds.
R. § 1979.

Lands taxable from date of contract.
R. § 1976.

SEC. 1857. All contracts relative to the sale of school lands provided for in this chapter, shall be subject to such laws as now are, or may hereafter be in force relative to the prevention or punishment of waste. Waste: punished. R. & 1977.

SEC. 1858. The township trustees in each township, shall see that no waste be committed upon any schools lands lying in their township, and in case any such waste be attempted, they shall apply by petition to the district or circuit court, or to any judge thereof, for an injunction to stay waste, and the same, if granted, shall be without bond. The court may make such order in the premises as shall be equitable and calculated to secure the school lands from waste or destruction and may adjudge damages against the party for injuries done in such cases; the costs shall abide the event of the suit, and the damages shall be paid to the county treasurer and constitute a part of the permanent school fund. Township trustees: duty as to waste. R. & 1978. Injunction. Damages and costs.

SEC. 1859. When, in the opinion of the board of supervisors, it may be necessary to have a portion of the school lands within their county surveyed, they may employ the county surveyor for the purpose, who shall be paid out of the county treasury upon proof made of the request and performance of the service. Supervisors may have survey made. R. & 1980.

FUNDS AND SECURITIES.

SEC. 1860. The several boards of supervisors shall hold and manage the securities given to the school fund in their respective counties, and also all judgments and lands therein belonging to said fund for the use of said fund; and to that end such counties shall have power to sue in their own name, for the use of said fund, either by the district attorney, or such other attorney as such board shall select, and to do all other acts in relation to the same necessary for the protection of said fund, and such counties shall be severally liable for all losses upon loans of such fund made in such county. But any county may discharge itself from any liability in any case wherein its liability is not made absolute by sections eighteen hundred and eighty-one, and eighteen hundred and eighty-two of this chapter, by showing that the alleged loss was not incurred by reason of any default of its officers or by taking insufficient or imperfect securities. The state auditor shall examine and adjust any claim by a county for exemption from liability under the foregoing proviso, upon proof in writing submitted to him in behalf of the county, within three months after he shall notify the county auditor of his readiness to receive it. In the absence of such proof, or, if the same is insufficient, the state auditor shall charge the amount of such loss against the county as a final adjustment. If found sufficient, he shall present the facts thereof in his report to the general assembly next ensuing. Supervisors to manage. 9 G. A. ch. 148, § 1. 14 G. A. ch. 68. Counties liable for losses. How discharged. Final adjustment.

As the lien of a school fund mortgage is superior to that of a tax title subsequently acquired on the property (§ 900), the county has no authority to buy in such tax title, such an act not being necessary for the protection of the fund; and held

that it had no authority to buy in such title for the purpose of defeating the lien of a mortgage held by a third party and prior to the one in favor of the fund: *Miller v. Gregg*, 26-75.

Fund loaned: hereinafter provided, as the same may come into the hands of the county treasurer, but no loan to any one person or company shall exceed the sum of five hundred dollars, nor shall any loan of the school fund be made to the county auditor, treasurer, or to any member of the board of supervisors. Said loans shall not be made for a shorter time than one year, nor for more than five years.
R. § 1881.

[This section is modified by 18th G. A., ch. 12, § 6; see that act inserted following § 1863.]

How secured: The payment of the money thus borrowed, together with interest thereon at the rate of ten per cent. per annum, shall be secured by promissory notes executed by the party borrowing, together with two good sureties, and by mortgage on unencumbered real estate, which, exclusive of any buildings, is appraised by the appraisers hereinafter provided for at double the value of the amount of money loaned; which real estate must be situated in the county where such loan is made.
R. § 1882.
10 G. A. ch. 118.
13 G. A. ch. 46.

[Rate of interest changed to eight per cent.; see 18th G. A., ch. 12, § 1, inserted following § 1863.]

Real estate offered as security appraised: The value of real estate offered as security for money loaned as herein provided, shall be fixed by three appraisers under oath, who shall be selected by the county auditor, and, in making the valuation provided for, the appraisers shall not take into consideration any buildings that may be on the land; said appraisers shall be allowed for their services the sum of fifty cents each, to be paid by the party borrowing, and the party borrowing shall pay for recording the mortgage given to secure such loan.
R. § 1883.

Costs.

[Eighteenth General Assembly, Chapter 12.]

Rate of interest. SEC. 1. The rate of interest on all permanent school funds loaned after January 1st, A. D. 1880, shall not exceed eight per cent. per annum from date of such loan.

Interest on interest. SEC. 2. Interest not paid when due shall bear interest at the same rate as the principal.

Interest charged to counties. SEC. 3. After July 1st, A. D. 1880, the counties having permanent school funds in control shall be charged only six per cent. instead of eight per cent. as now provided by the code.

[Sec's 4 and 5 amend respectively § 1846 and § 1873 of the code, which see.]

Amount of loan to one person.

SEC. 6. Loans may hereafter be made to one person, or one company, to the amount of one thousand dollars; *provided*, it is found impracticable to keep the whole amount of the funds loaned in sums of five hundred dollars or less.

Repealing clause.

SEC. 7. All laws inconsistent with this act are hereby repealed.

LOANS.

Loan of permanent school fund by county auditor. SEC. 1864. When any person desires to borrow from the permanent school fund, he shall apply to the county auditor, and if, in the opinion of said auditor, it would be to the interest of the school fund to grant such application, he shall order the necessary
R. § 1884.

papers to be made out to secure the amount thus to be borrowed, as required by sections eighteen hundred and sixty-two and eighteen hundred and sixty-three of this chapter. When the same are made out, they shall be presented to said auditor, who shall, if he approves the same, endorse thereon, "accepted," and sign his name below the same, and he shall examine the title to any real estate offered as security, and make and preserve an abstract of such title, which shall be certified by him and submitted to the board of supervisors at the first meeting thereafter; he may charge a fee not to exceed two dollars for his services in making such abstract of title, to be paid by the party borrowing. He shall then give to the party borrowing a copy of the promissory note, certifying over his hand and official seal, that it is a correct copy of the same, which, together with a mortgage securing it, has been filed in his office, and upon the parties presenting said certificate to the treasurer, he shall pay the amount specified in said copy of note out of the permanent school fund in his possession, and retain the said certified copy as his voucher. The said auditor shall file the original note in his office, and also the mortgage, after having it recorded.

The auditor is not authorized to receive money paid into the school | fund: *Mahaska Co. v. Searle*, 44-492; *Sime v. Ruan*, 45-328.

SEC. 1865. In all cases where the county auditor is required to take mortgages upon real estate as security for money borrowed, and upon the return of the appraisers thereof, the said auditor shall examine the assessment of the said land for the year previous, and should the said appraisal be higher than the said assessment, shall take the security upon one-half of the assessed valuation thereof.

SEC. 1866. At each meeting of the board of supervisors, the auditor shall make a full statement of all money received for and loaned out of the school fund under his control, and shall also submit for their examination all notes, mortgages, and abstracts of title connected with the school fund which have come into his possession since their last meeting. Said board, at the first meeting after such report and papers are submitted to them, shall either approve or disapprove of each loan made by said auditor. Should they disapprove of any loan or security thus reported, they may require the party borrowing to give additional security within thirty days; and in case of failure so to do, the entire amount, both of principal and interest, owing to the school fund, shall be deemed to have become due, and the district attorney shall be directed immediately to collect the same; and in such case, should it be found impossible to collect the entire amount due, and the security prove insufficient, then the county auditor and his bondsmen shall be liable for the deficiency. The provision herein contained with regard to principal and interest becoming due on the failure to give additional security when required for money borrowed from the school fund, is hereby declared to be a part of every contract made under and by virtue of this chapter, whether expressed in the contract or not.

SEC. 1867. When any person desires to pay either principal or interest due the school fund, he shall obtain a certificate from the auditor to certify amount due.

Money paid to treasurer. county auditor specifying the amount due from such person to the school fund, stating whether is is principal or interest, or both, and setting forth distinctly the amount of each. Upon the presentation of which certificate to the county treasurer, the treasurer shall receive the amount so specified from the person presenting the certificate, and shall endorse on said certificate the date and his name, and upon the return to the auditor of such certificate so endorsed, the party returning it shall have a receipt from him for the amount so paid.

Supervisors may pay prior encumbrances. SEC. 1868. Whenever any portion of the school fund has been loaned upon real estate security, upon which exists a prior encumbrance other than for taxes, the board of supervisors shall have authority, in their discretion, if they deem it necessary to remove said prior encumbrance in order that said fund may ultimately realize the money upon said loan, to appropriate so much money out of the school fund, if any there be within said county, as shall be necessary to remove said incumbrance; *provided*, said encumbrance shall not exceed one-half the actual cash value of said real estate.

Supervisors may assign claims due fund. SEC. 1869. The board of supervisors may, by resolution, assign without recourse any school fund claim to any person having a subsequent lien on the premises affected by such claim, upon the full payment of the amount due the said fund, but not otherwise.

May employ agents to examine securities and make abstracts of titles. SEC. 1870. Such board may, when deemed necessary, employ some competent person to examine the securities aforesaid, make abstracts of titles to the lands mortgaged, and make out complete statements thereof for such boards, and under the direction of said boards, or committee thereof, to procure the renewal of such notes and mortgages, when demanded by persons entitled thereto, upon such terms as to time and security in all respects as in making new loans. And such agent may, with the consent of said board or committee, take from any person responsible for any loan, any additional security by way of bond or mortgage, or both, in cases where the property mortgaged is inadequate security for the sum loaned, and the applicant shall pay up all interest and procure the written consent of the securities on the note; but in all cases of the continuance of loans, as well as in cases of new loans, abstracts of title shall be presented and filed with the mortgage, which shall show that the title to the mortgaged premises is in the mortgagor, free and clear of any encumbrance or debt.

Upon payment of interest principal reloaned. Same, § 4. SEC. 1871. Any person responsible to the school fund for any part of the principal thereof, who shall promptly pay all interests and costs, if any, thereon, whether the same may be rendered into a judgment or not, shall be permitted to borrow such principal upon complying in all respects with the requirements of law relating to new loans.

The right to reborrow the principal must be exercised under such regulations as the board of supervisors may establish by virtue of § 1860. Such right cannot be set up as a defense | in an action for the principal sum, but may be enforced, if it exists, by action of mandamus against the auditor: *Emmett Co. v. Skinner*, 48-244.

SEC. 1872. Every county auditor in whose county there are outstanding contracts on the sale of school lands, which are due, shall immediately publish a notice requiring all persons holding any such lands, to at once pay up the amount due thereon, or otherwise make satisfactory arrangements for an extension of time. He shall also give a like notice to all mortgagors to said fund on whose notes either principal or interest is due. Such notices shall be printed for four weeks in a newspaper published in the county, if there be one; if there be none, then in such newspaper published in this state as will be most likely, in the opinion of said auditor, to give notice to all concerned; and a copy of such notice shall be posted for the same time at the outer door of the building in which the last district court in said county was held.

SEC. 1873. In case the person holding lands so contracted or mortgaged shall neglect to pay the sums due thereon, or make an arrangement for an extension of time within three months from the first publication of such notice, the board of supervisors may cause suit to be brought and prosecuted with the utmost diligence to secure said fund, and in any action in favor of a county for the use of the school fund, an injunction may issue without bond, and in any such action, where service is made by publication, default and judgment may be entered and enforced without the bond required of individuals. In all such suits the court shall give the plaintiff, as a part of the costs, such an amount as will be a sufficient compensation for the plaintiff's attorney in the case, but in no case to exceed ten per cent. on the amount for which judgment is rendered, and in no case to exceed twenty-five dollars.

[As amended by adding the words at the end of the section, after "attorney in the case;" 18th G. A., ch. 12, § 5.]

SEC. 1874. In case of sales of lands on execution founded on any such mortgage or contract, the attorney for said board, or other person authorized by said board, shall bid on behalf of the state or county, as the case may be, for the use of said fund, such sum as the interests of said fund may require, and if struck off to the state, the same shall be held and disposed of in all respects the same as other lands belonging to said fund, except as herein-after provided.

SEC. 1875. All contracts, notes and mortgages given to said fund shall be made payable to the county controlling them, but no such contracts, notes, or mortgages shall be invalid because they are made payable to any other payee, but the same shall be deemed and taken to belong to said county for the use of said fund, and suits may be maintained thereon in the name of the said county, with the same effect as if they were drawn payable to the said county.

SEC. 1876. Each county treasurer shall, immediately upon receiving or paying out any moneys belonging to the school fund, enter a correct account thereof on proper books kept by him for the purpose in all cases where money is received, distinguishing between principal and interest, and shall keep an account showing all money due the school fund, whether principal or interest, and designating the amount of each and from whom due, and his books shall at all times present a clear and intelligible statement

Auditor to publish notice when money is due.
Same, § 5.

Suit brought to enforce collections.
Same, § 6.

Injunction.
Attorney's fee taxed as part of the costs.

Land bid off at sale for use of school fund.
Same, § 7.

Contracts and notes made payable to county.
Same, § 9.

Treasurer to keep accounts distinguishing between principal and interest.
R. § 1990.

of the school fund in his hands. Said books shall at all times be open to the inspection and examination of any householder or tax-payer in the county.

SEC. 1877. Each county auditor shall keep in his office, in books provided for that purpose, an account to be known as the school fund account, in which he shall enter all notes, mortgages, bonds, and assets of every kind and description which may come into his hands, and he shall open accounts with the county treasurer in which he shall charge him with all money in his hands at the time such account is opened, and also with all money which may thereafter be paid to him, as shown by the certificates duly endorsed as hereinbefore provided for, distinguishing between principal and interest, which shall be kept in distinct accounts; and shall, on the third Monday in May, the first Monday of October, and the third Monday of December, in each and every year, make a complete settlement of the school fund account with the county treasurer, from the time of the last settlement, and at each regular meeting of the board of supervisors, he shall submit a full report of his last settlement with the county treasurer, and also of all notes, mortgages, bonds, and assets of every kind and description which have come into his hands since the last meeting of the board.

SEC. 1878. Any county treasurer, or auditor, failing or neglecting to perform any of the duties which are required of him by the provisions of this chapter, shall be liable to a fine of not less than one hundred dollars nor more than five hundred dollars, to be recovered in an action brought in the district court by the board of supervisors, the judgment to be entered against the party and his bondsmen and the proceeds to go to the school fund.

SEC. 1879. Whenever it shall be evident to the board of supervisors, that the interest of the school fund will be endangered by immediate prosecution of any mortgage, or the sale of mortgaged premises, they may give such reasonable time as they may deem for the best interests of the school fund.

SEC. 1880. Lapse of time shall in no case bar any action brought, or to be brought, on any contract for any part of the school fund, nor shall such lapse of time prevent the introduction of evidence in any such action, any provision of this code to the contrary notwithstanding.

[For similar provision, see § 2542.]

COUNTIES RESPONSIBLE.

SEC. 1881. On and after the first day of January, A. D. 1874, the board of supervisors of the several counties shall have sole control and management of all loans on mortgages then held or thereafter made, and shall, when necessary, have them foreclosed at the expense of the county; and any losses sustained or gains realized upon foreclosures and re-sales of mortgaged property, shall be made good by or enure to the benefit of the county, as the case may be; *provided, however,* that upon a foreclosure of contracts, when the land is bid in by the county, the auditor of state, as soon as notified by the county auditor that the foreclosure has been effected and the lands bid in, shall give the

Auditor to keep
accounts with
fund and treas-
urer.
R. § 1991.

To make their
yearly settle-
ments.

To make re-
port.

Penalty for fail-
ure of duty by
auditor or
treasurer.
R. § 1992.

Time to pay
given.
R. § 1993.

Lapse of time
no bar to suit.
9 G. A. ch. 148,
§ 13.

Supervisors to
control school
fund: mort-
gages fore-
closed at ex-
pense of coun-
ty: losses made
good by.
14 G. A. ch. 24,
§ 3.

county credit for the original amount of the notes remaining unpaid; and on being notified by the county auditor that a re-sale has been effected, he shall charge the county with the full amount of re-sale; but when the land is purchased by a third party on the foreclosure for a less amount than due on the contract notes, the loss shall be sustained by the county. County auditors shall report annually on the first day of January, the amounts of all sales and re-sales of the sixteenth section, five hundred thousand acres grant, and escheated estates made the year previous; and the auditor of state shall charge up the same to said counties, and also charge interest on the same from the date of said sales or re-sales, at the rate of eight per cent. per annum.

SEC. 1882. On and after the first day of January, A. D. 1874, the auditor of state shall charge up to each county having permanent school fund under its control, interest on the whole amount in said county, at the rate of eight per cent. per annum, semi-annually, on the first day of January and July of each year, which amount so charged shall become due and payable on the first day of January and July of the year following, and be embraced in the semi-annual apportionment of interest collected for the year eighteen hundred and seventy-five and each year thereafter, and shall be deemed the whole amount due from each county on account of interest accrued subsequent to the first day of January, eighteen hundred and seventy-four. Any surplus of interest collected over the eight per cent. charged to the counties, shall be paid into the county treasury for the benefit of the county. If any county should fail to collect the full amount of interest due the state, the deficiency shall be advanced from the county treasury, and if any county becomes delinquent in the payment of the full amount of interest due the state, the auditor of state shall charge to and collect from such county a penalty of one per cent. per month on the amount delinquent until paid.

[Rate of interest fixed at six per cent. after July 1st, 1880; see 18th G. A., ch. 12, § 3; inserted following § 1863.]

SEC. 1883. Whenever there are funds belonging to the permanent school fund in any county amounting to one thousand dollars that cannot be loaned according to law, the county auditor may certify the fact to the auditor of state, who shall order a transfer of said funds to some other county, or counties, where, in his opinion, it can be loaned readily. Upon such transfer being made, the auditor of state shall give the county making the transfer credit for the amount transferred, and shall charge the county or counties to which the transfer is made with the amount transferred, and shall afterwards charge interest on the actual amount in the possession of each county.

SEC. 1884. The county auditors shall continue to report to the auditor of state, semi-annually as now required by law, the amount of interest collected and which accrued previous to the first day of January, A. D. 1874, until the amount of interest due up to that date has been collected. The amount collected from time to time shall be added to the semi-annual apportionment of interest heretofore provided for. The county auditor shall also embrace in said reports, in the year eighteen hundred and seventy-five and

Auditor of state
to charge coun-
ties interest at
eight per cent.
Same, § 4.

Surplus inter-
est paid county
treasurer.

Delinquency:
penalty.

When funds
cannot be
loaned: trans-
fer of made.
Same, § 5.
10 G. A. ch. 118, •
12

County audi-
tors to report
to auditor of
state semi-an-
nually.
14 G. A. ch. 84,
16

thereafter, the amount of interest collected and which accrued subsequent to the first day of January, eighteen hundred and seventy-four, in a separate item.

CHAPTER 13.

OF THE STATE LIBRARY.

SECTION 1885. The governor, judges of the supreme court, secretary of state, and superintendent of public instruction, shall, by virtue of their office, constitute a board of trustees of the state library, of which the governor shall be president.

SEC. 1886. The said trustees shall have full power to make and carry into effect such rules and regulations for the superintendence and care of the books, maps, charts, papers, and turniture contained in the state library, and for the arrangement and safe keeping of the same as they may deem proper.

SEC. 1887. The said trustees shall provide in their rules and regulations, that any member of the general assembly, any member or attorney of the supreme court, during the sessions of the same, the judges and attorneys of the courts of the United States, and the heads of departments of state, shall be permitted, under proper restrictions, penalties, and forfeitures, to take from the library any books, excepting such as the trustees shall determine ought not to be removed therefrom; but none of such persons shall be allowed to take such books or property from the library without executing a receipt therefor, nor to retain the same more than ten days at a time.

SEC. 1888. No books or other property shall be removed from the seat of government, and no person shall be entitled to take from the library more than two books at the same time; provided, that during the terms of the supreme court of the state, or the federal courts, the judges and attorneys of said courts may be permitted to take and use any number of books needed on the trial of causes, but such books shall not be taken from the seat of government, and shall be returned according to law.

[Eighteenth General Assembly, Chapter 69.]

SEC. 1. From and after the taking effect of this act, no books, maps, charts or papers, belonging the state library, shall be removed from the capitol building, except to remove the same from the old capitol building to the new capitol building when such building shall have been prepared to receive the same.

SEC. 2. All acts or parts of acts inconsistent with this act are hereby repealed, so far as the same conflicts with this act.

SEC. 1889. The state library shall be kept open every day during the sessions of the general assembly and the supreme court, and during such other days as the trustees shall direct, and during such hours as shall be determined by the trustees.

Books not to
be removed
from the build-
ing.

Repealing
clause.

Kept open.
Same, § 5.

SEC. 1890. The state library shall be in the custody of the state Librarian to have custody of bond of. librarian, who shall be appointed by the governor, and who shall hold the office for the term of two years, commencing on the first Same, § 6. day of May, and until his successor shall be appointed and qualified. Before entering upon the duties of his office, he shall give a bond with good and sufficient surety, in the penal sum of five thousand dollars, in such form as the governor shall approve, conditioned for the performance of all the duties required of him by law, and for the observance of all the rules prescribed by the trustees of the library.

[The word "thousand" in the seventh line, as in the original, is "hundred" in the printed code.]

SEC. 1891. The librarian shall give his personal attendance Duties of. upon the library during the hours it shall be directed to be kept Same, § 7. open, and shall perform such duties as shall be imposed on him by law or shall be prescribed by the rules and regulations of the trustees.

SEC. 1892. The librarian shall prepare a complete alphabetical catalogue of the library, number the books therein, and report Prepare cata- same to the governor, who shall cause the same to be published for the use of the library. logue. Same, § 9.

SEC. 1893. The librarian shall cause each book in the library to Books labelled and marked. Same, § 10. be labelled with a printed label to be pasted on the inside of the cover, with the words, "Iowa State Library," with the number of the volume in the catalogue of said library inscribed on said label, also to write the same words at the bottom of the thirtieth page of each volume. All books that may hereafter be added to the library shall be labelled in the same manner, and entered on the catalogue, immediately on their receipt, and before they can be taken therefrom.

SEC. 1894. The librarian shall make report to the governor five days before the adjournment of any session of the general assembly, of the number of books that have been taken out of the library by the members, giving the names of all members that have any books at the date of such report, with the name and number of such book. Report to gov- ernor. Same, § 11.

SEC. 1895. All fines, penalties, and forfeitures, imposed by the Fines and pen- rules and regulations of the library for any violation of such rules alties. Same, § 12. and regulations, may be recovered in any proper action or proceeding in the name of the state, before any court of competent jurisdiction; and all such fines, penalties, forfeitures, and recoveries shall be applied to the use of the library, under the direction of the trustees.

SEC. 1896. Any person injuring, defacing, destroying, or losing a book, shall pay to the librarian twice the value of the book, and, if it be one of a set, he shall be liable to pay the full amount of the value of the set, and the librarian shall prosecute such person on such liability; provided, that if such person shall, within a reasonable time, replace the book so injured or lost, he shall not be liable under this section. Penalty for In- juring or de- stroying books. Same, § 13.

SEC. 1897. The librarian shall report to the governor, whenever required, a list of books and other property missing from the library, an account of fines and forfeitures imposed and collected, and the amount uncollected, a list of the accessions to the library. Report to gov- ernor and gen- eral assembly. Same, § 14.

since the last report, and all other information required by the governor. He shall also make a full and specific report to the general assembly on the first day of its regular sessions.

[SEC. 1898 repealed; see 16th G. A., ch. 159, inserted following § 132.]

Appropriation
for.
Same, § 16.

SEC. 1899. There is hereby appropriated, out of any funds in the state treasury not otherwise appropriated, the sum of two thousand dollars, annually, commencing on the first day of January, 1881, to be expended by the board of trustees in the purchase of books for the library; and the further sum of five hundred dollars for the purpose of paying the salary of an assistant librarian, when, in the judgment of the trustees, the services of an assistant librarian shall be for the interests of the library.

[Substitute for the original; 18th G. A., ch. 194.]

CHAPTER 14.

OF THE STATE HISTORICAL SOCIETY.

Appropriation
for: for what
purposes ex-
pended.
R. § 169.

SECTION 1900. There is hereby annually appropriated, until the legislature shall, by law, otherwise direct, to the state historical society at Iowa City, in connection with and under the auspices of the state university, the sum of ten hundred dollars, to be expended by that society in collecting, embodying, arranging, and preserving in authentic form, a library of books, pamphlets, maps, charts, manuscripts, papers, paintings, statuary, and other materials illustrative of the state of the history of Iowa, to rescue from oblivion the memory of its early pioneers, to obtain and preserve varieties of their exploits, perils, and hardy adventures; to secure facts and statements relative to the history, genius, and progress or decay of our Indian tribes; to exhibit faithfully the antiquities, past and present resources of Iowa; also to aid in the publication of such of the collections of the society as the society shall from time to time deem of value and interest; to aid in binding its books, pamphlets, manuscripts, and papers, and in paying other necessary and incidental expenses of the society.

[As amended, changing the amount of the appropriation; 18th G. A., ch. 71.]

Board of cura-
tors: how ap-
pointed: an-
nual meeting
of.
14 G. A. ch. 109,
§ 1, 2.

SEC. 1901. The board of curators of said society at Iowa City shall consist of eighteen persons, of whom nine shall be appointed by the governor of the state, and nine elected by the members of the society. The term of office of said curators shall be two years, except as provided in the next section, and they shall receive no compensation for their services. The curators appointed by the governor, shall be appointed on or before the last Wednesday in June in each even-numbered year, and their term of office shall commence on that day. And at the annual meeting of said historical society, held next before the last Wednesday in June in each odd-numbered year, there shall be

elected by ballot from the members of the society, nine curators for the term next ensuing.

SEC. 1902. The members of said society may be admitted at any time under the rules now in force, or such other rules as may hereafter be adopted by the board of curators.

SEC. 1903. The annual meeting of the society shall be held at Iowa City, on the Monday preceding the last Wednesday in June of each year.

SEC. 1904. The board of curators shall choose, annually, or oftener if need be, a corresponding secretary, recording secretary, a treasurer, and a librarian, who shall be selected from the members of the historical society outside of their own number, and shall hold office for one year, unless sooner removed by a vote of the board. Said officers shall be officers of the society as well as of the board of curators, and their respective duties shall be determined by said board. No officer of the society or of the board shall receive any compensation from the state appropriation to the society.

SEC. 1905. The board of curators shall also choose from their own number a president, who shall be the executive head of the board, and shall hold his office for one year, and until his successor is elected.

SEC. 1906. The curators, a majority of whom shall reside in the vicinity of the state university, and five of whom shall constitute a quorum, shall be the executive department of the society, and shall have full power to manage its affairs. They shall keep a full and correct account of all their doings, and of the receipt and expenditure of all funds collected or granted for the purpose of the society, and shall report the same annually to the governor, on or before the fifteenth day of December, as required by law of other state institutions.

SEC. 1907. There shall be delivered to said society, twenty bound copies of the reports of the supreme court, and of all other books and documents published by the state, or at its order, for the purpose of effecting exchanges with similar societies in other states and countries, and for the preservation in its library, and the other purposes of the society.

PART SECOND.

PRIVATE LAW.

TITLE XIII.

OF RIGHTS OF PROPERTY.

CHAPTER 1

OF RIGHTS OF ALIENS.

SECTION 1908. Aliens, whether they reside in the United States or any foreign country, may acquire, hold, and enjoy property, and may convey, devise, mortgage, or otherwise encumber the same, in like manner and with the same effect, as citizens of the state.

In regard to the right of aliens to acquire, hold and dispose of real property, it has been held: 1st, That prior to the adoption of the state constitution of 1846, the common law rule was in force, and although it was then provided by statute (as now in § 2453) that real property should descend in equal shares to the children, nevertheless an alien child had no inheritable blood and could not take by descent; and that the provisions of that constitution (present Const. art. 1, § 22), only changed the rule as to aliens who were residents at the time of descent cast: *Stemple v. Herminghouser*, 3 Gr., 408; *Krogan v. Kinney*, 15-242, 2d. That the act of 1858 (Rev. §§ 2488-2493), was intended to apply only to aliens resident in this state or the United

States, except in the single instance, provided for in Rev. § 2493, of a devise by will to a non-resident alien who should afterward become a resident: *Krogan v. Kinney*, *supra*; *Rhein v. Robbins*, 20-45; and see the opinions of the divided court in *Purcell v. Smidt*, 21-540; and *Greenheld v. Stanforth*, 21-595; but subsequently the court united in adhering to the doctrine that under the act above referred to, a non-resident alien could not inherit: *Brown v. Pearson*, 41-481.

The acts embodied in this and the following section superseded all previous legislation on the subject: *Code Com'r's Rep.*, p. 62.

As to the interest of the widow of a non-resident alien in the property of her husband, see § 2442.

May acquire,
hold and dis-
pose of prop-
erty.
12 G. A. ch. 56,
§ 1.
12 G. A. ch. 193,
§ 1.

Retroactive. SEC. 1909. The title to any land heretofore conveyed or transferred by devise or descent, shall not be questioned or in any manner affected by reason of the alienage of any person through whom such title may have been derived.
Same chs., § 3.

CHAPTER 2.

OF TITLE IN THE STATE OR COUNTY.

When vested in state or county valid. SEC. 1910. Whenever, to secure the state or any county therein from loss, it shall become necessary to take real estate on account of a debt, either by bidding off the same at a sale on execution or otherwise, the conveyance thereof to the state, or to any county, shall vest in such grantee as complete a title as if such grantee were an actual person.
§ 1.
14 G. A. ch. 108.

[The word "any" before "county" in the first line, as in the original, is omitted in the printed code.]

May purchase when sold on execution. SEC. 1911. The proper person to bid off such real estate shall be:
9 G. A. ch. 156, § 1.

1. The attorney-general, or the proper district attorney, in case the judgment is in the name of the state, and the proceeds thereof are payable into the state treasury;

2. In case the proceeds of the judgment are, by law, payable into the county treasury for the use of the county revenue, or the school or other fund of the county, the district attorney of the district, or the president of the board of supervisors of the county, or any attorney employed or authorized by the board of supervisors to prosecute such claim.

To be appraised: amount of bid. SEC. 1912. In all cases where property is sold as above provided, it shall first be appraised in the manner provided by law for the appraisement of property levied on under execution, and the said officers shall bid upon and purchase said property for the lowest sum possible. If no other person shall bid therefor, they shall bid at least two-thirds of the appraised value thereof, or the full amount of the judgment and costs, if the same is less than two-thirds of such appraised value.
11 G. A. ch. 110, § 1.

Costs and expenses paid by state or county. SEC. 1913. In cases where the state becomes the purchaser of real estate, under execution issued upon judgments rendered in favor of the state, all costs and expenses attending the same shall be audited and allowed by the executive council, and paid out of any money in the state treasury not otherwise appropriated, whenever such costs and expenses cannot be collected out of the defendant in such judgments, and if the property is purchased by a county, the costs and expenses in like cases shall be paid by such county.

Lands may be leased. SEC. 1914. Whenever the state or any county holds any such lands undisposed of, it may, by its proper agent, lease and control the use of the same, as shall, in the opinion of the executive council, if belonging to the state, and the board of supervisors, if
9 G. A. ch. 32, § 6.

belonging to the county, be for the best interest of such owner; and the proceeds of such use shall belong to the fund to which the debt on which the land was taken belongs.

SEC. 1915. The officers invested with the control and management thereof, shall have full power, and shall keep any valuable buildings insured. Buildings insured. 11 G. A. ch. 110, § 2.
buildings thereon insured against fire, for the benefit of the state or county, in some responsible insurance company or companies; and the expense of such insurance shall be paid out of the rents of such property or the proceeds thereof when sold.

SEC. 1916. In any case where the title to any real estate is vested in the state as above provided, the executive council shall vest title in state: have the care, custody, and management thereof, and may sell executive council to the same for such sum and upon such terms as to them seems best, 9 G. A. ch. 82, § 3.
and may take such adequate security for any deferred payments as they see proper; and the proceeds of such sale shall be paid to the proper officer and credited to the fund to which the debt on which such real estate was taken belonged. A patent shall be issued to the purchaser of such real estate.

SEC. 1917. In cases where the title to any real estate is vested in any county as above provided, it shall be competent for the board of supervisors to sell and dispose thereof, as in their judgment shall be for the best interest of their county; if the same is sold on time for any part of the purchase money, the board shall require adequate security for the payment thereof besides the responsibility of the purchaser; and the proceeds of sales of all such lands shall belong to the fund to which the debt on which the land was taken belonged.

SEC. 1918. In case of any such sale and conveyance by such board of supervisors, the resolution making the sale shall be entered on the minutes of the board, and the yeas and nays on the passage thereof shall be also there entered with the date; such resolution shall express the consideration paid for such land, and such a description thereof as shall be necessary to make a deed therefor; and a transcript of such proceedings relating to said sales, the resolution and yeas and nays on its passage made and certified under the hand of the county auditor and the seal of the said board, shall be a sufficient deed of conveyance by the said county, and shall be entitled to be recorded or received in evidence without further proof.

SEC. 1919. The state, or county, on selling such lands, may, at the option of the officer making such sale, execute a contract of sale, or an absolute conveyance thereof, and may take notes, mortgages, contracts, or other securities, payable to the grantor, which shall be as valid as if made to an actual person.

CHAPTER 3.

OF PERPETUITIES AND LAND IN MORTMAIN.

SECTION 1920. Every disposition of property is void, which suspends the absolute power of controlling the same for a longer Disposition of property: when void. R. § 8199.

period than during the lives of persons then in being and for twenty-one years thereafter.

SEC. 1921. Church organizations occupying property granted to them by the territory or state of Iowa, may lease the same for business purposes, and occupy other property with their church edifice; *provided*, that all of the income derived from such leased property shall be devoted to maintaining the religious exercises and ordinances of the church to which the grant was originally made, and to no other purpose; and such church and its affairs shall remain in the control of a board of trustees regularly chosen in accordance with its charter; but property so leased, shall, in all cases, be subject to taxation the same as the property of individuals.

Conditional sales: when invalid.
14 G. A. ch. 63.

SECTION 1922. No sale, contract, or lease, wherein the transfer of title or ownership of personal property is made to depend upon any condition, shall be valid against any creditor or purchaser of the vendee, or lessee in actual possession obtained in pursuance thereof, without notice, unless the same be in writing, executed by the vendor or lessor, acknowledged and recorded the same as chattel mortgages.

The absence of notice, etc., does not render the sale invalid as to creditors and others. It is only the *condition* that is void: *Pash v. Weston*, 52-75.

Such sale or contract is valid as between the parties, without recording: *Warner v. Jameson*, 52-70.

Where the property was in the possession of a party on trial, with the agreement that at the expiration of a certain time he should have the privilege of buying, if satisfactory, *held*, that until the expiration of that time there was no conditional sale or contract such as would render the property liable for his debts; that the "contract" here referred to is one creating the relation of vendee or lessee: *Mowbray v. Cady*, 40-604.

The facts of a particular case *held* not to constitute a conditional sale

but the relation of principal and agent: *Conable v. Lynch*, 45-84.

Section held applicable in case of a sewing machine lease: *Singer Sewing Machine Co. v. Holcomb*, 40-33.

This statute (14 G. A., ch. 63), is not retrospective, and does not apply to sales, etc., made before it took effect: *Knoulton v. Redenbaugh*, 40-114; *Moseley v. Shattuck*, 43-540.

Prior to the passage of the act embodied in this section, it was held that where a purchaser of personal property acquired possession under a conditional sale, but failed to acquire title, a purchaser from him, although in good faith and without notice, acquired no title as against the original owner, unless the original transaction was fraudulent: *Bailey v. Harris*, 8-331; *Robinson v. Chapline*, 9-91; *Baker v. Hall*, 15-277.

Mortgages of
must be re-
corded.
R. & 2201.
C. 51, § 1193.

SEC. 1923. No sale or mortgage of personal property, where the vendor or mortgagor retains actual possession thereof, is valid against existing creditors or subsequent purchasers, without notice, unless a written instrument conveying the same is executed, acknowledged like conveyances of real estate, and filed for record with the recorder of the county where the holder of the property resides.

The change in the "actual possession" sufficient to take a case out of the provisions of this section, must be something to indicate the change of ownership. If the property be left with the seller whose relations to it continue unchanged, so far as the world may know from the acts of the parties, the possession will be regarded as continuing in him: *Boothby v. Broun*, 40-104; *Sutton v. Ballou*, 46-517; *Hickok v. Buell*, 51-655.

The use of the term "actual possession" implies that a change of possession sufficient to constitute a delivery and pass the property as between the parties, may not be sufficient to impart notice to others. To take a case out of the statute, something must be done to impart such notice. Therefore where there was a sale of a field of corn standing on the farm of the vendor, the vendee not taking immediate charge of the corn nor control of the field, *held*, that the vendor retained actual possession within the meaning of the section: *Smith v. Champney*, 50-174; *Nuckolls v. Pence*, 52-581.

There must be an actual change of possession: *McKay v. Clapp*, 47-418.

But where the property is not in the actual possession of the mortgagor or vendor, or in his custody so that there may be manual delivery, an actual delivery is not necessary to the validity of the transaction. If the property is placed in the power of the purchaser, that is sufficient: *Barrows v. Harrison*, 12-588.

If the property at the time of the sale or mortgage is in the possession of a lessee, and remains in his possession, the vendor does not retain the "actual possession" of the property, and this section does not apply: *Thomas v. Hillhouse*, 17-67; so *held*, also, where the goods were in the hands of a common carrier: *Alsberg v. Latta*, 30-442.

A mortgagee is a "purchaser" within the meaning of this section: *Manny v. Woods*, 33-265.

The term "existing creditors" applies not only to creditors existing at the time the sale was made, but also to those who become such before change of possession, recording of the instrument, or giving of notice: *Fox v. Edwards*, 38-215.

The words "without notice" apply as well to creditors as to purchasers, and an unrecorded mortgage is valid as against existing creditors with notice thereof at the time of its execu-

tion: *Allen v. McCalla*, 25-464; *Miller v. Bryan*, 3-18; *Crawford v. Burton*, 6-476; *McGarran v. Haupt*, 9-83.

An unrecorded mortgage is valid against attaching creditors with notice of its existence at any time before levy: *Cragin v. Carmichael*, 2 Dillon (U. S. C. C.), 519.

The phrase "without notice" contemplates not only actual notice of the contents of the instrument, but also any notice sufficient to put a reasonable man upon inquiry: *Allen v. McCalla*, 25-464.

To make a bill of sale, duly recorded, valid as against subsequent purchasers in the cases here contemplated, it is not necessary that it contain any express stipulation that the vendor is to retain possession of the property. Being recorded, the instrument is to have the same effect as if accompanied by actual delivery: *Kuhn v. Graes*, 9-303.

The retention of the mortgaged property by the mortgagor does not, as matter of law, render the mortgage fraudulent and void: *Torbert v. Hayden*, 11-435; *Fromme v. Jones*, 13-474; *Wilhelmi v. Leonard*, 13-330; *Smith v. McLean*, 24-322, 330; and so *held*, where it was stipulated in the mortgage that the mortgagor might dispose of the goods in the usual course of retail trade, paying a certain per cent. of the proceeds to the mortgagee and keeping the stock up to its original value: *Hughes v. Cory*, 20-399.

It seems that a mortgage upon firm property, executed by one partner in his individual name, if within the scope of his authority as partner, would be sufficient to impart notice: *Fromme v. Jones*, 13-474.

As to whether a chattel mortgage, executed upon fixtures which are not severed from the realty *in fact*, will operate as a *constructive* severance, and pass the title in such fixtures to the grantee, *quare*; but the recording thereof will not impart to subsequent purchasers of the realty constructive notice of such incumbrance: *Bringhoff v. Munzenmaier*, 20-513.

Where the owner of real property executes a mortgage upon chattels, which may properly be made fixtures, and subsequently affixes them to the realty, a person purchasing or acquiring a lien upon such real property with knowledge of the facts, takes subject to the mortgage; and, *held*, that the mechanic who attached such fixtures to the realty was affected with notice by the recording of such

chattel mortgage, and his lien was subject thereto: *Souden v. Craig*, 26-156.

A chattel mortgage will be valid in any county to which the property is removed, although not recorded there, if duly recorded in the county where the owner of the property

resides. And the same holds true where a mortgage is duly recorded in another state, and the property is subsequently brought into this state and sold: *Smith v. McLean*, 24-322.

Section applied, generally: *Prather v. Parker*, 24-26; *Hesser v. Wilson*, 36-152.

SEC. 1924. The recorder must keep an entry book or index for instruments of the above description, having the pages thereof ruled, so as to show in parallel columns, in the manner hereinafter provided in case of deeds for real property:

1. The mortgagors or vendors;
2. The mortgagees or vendees;
3. The date of the filing of the instrument;
4. The date of the instrument itself;
5. Its nature;
6. The page and book where the record is to be found.

SEC. 1925. Whenever any written instrument of the character above contemplated is filed for record as aforesaid, the recorder shall note thereon the day and hour of filing the same, and forthwith enter in his entry book all the particulars required in the preceding section, except the sixth; and from the time of said entry, the sale or mortgage shall be deemed complete as to third persons, and have the same effect as though it had been accompanied by the actual delivery of the property sold or mortgaged.

SEC. 1926. The recorder shall, as soon as practicable, record such instrument, and enter in his entry book, in its proper place, the page and book where the record may be found.

SEC. 1927. In the absence of stipulations to the contrary in the mortgage, the mortgagee of personal property is entitled to the possession thereof.

Under Rev., § 2217, providing that the mortgagee should hold the *legal title* as well as the right to possession, *held*, that the legal title was in him for the purpose of enabling him to enforce his lien, but that the *ownership* remained in the mortgagor: *Hubbard v. Harford Fire Ins. Co.*, 33-325, 333, 341. Also *held*, that the mortgagor of personal property had no interest therein which could be levied upon and sold under execution: *Campbell v. Leonard*, 11-489; *Gordon*

v. Hardin, 33-550.

A mortgagor of personal property has a right to redeem, even after condition broken, and the mortgagee, although in possession after such breach, is liable to garnishment by creditor of mortgagor for any surplus remaining in his hands, in case of a sale of the property, beyond what is necessary to pay his claim: *Douane v. Garretson*, 24-351. But a mortgage not in possession cannot be garnished. See note to § 2975.

CHAPTER 5.

OF REAL PROPERTY.

SECTION 1928. All persons owning lands not held by an adverse possession, shall be deemed to be seized and possessed of the same.

Who seized.
R. § 2207.
C. 51, § 1190.

This presumption of seizin continues until the owner is disseized: *Barrett v. Lore*, 48-103.

SEC. 1929. The term "heirs," or other technical words of inheritance, are not necessary to create and convey an estate in fee simple. Estate in fee simple.
R. § 208.
C. 51, § 1200.

Applied: *Barlow v. C. R. I. & P. R. Co.*, 29-276.

SEC. 1930. Every conveyance of real estate passes all the interest of the grantor therein, unless a contrary intent can be reasonably inferred from the terms used. Conveyance passes interest of grantor.
R. § 220.
C. 51, § 1201.

A conveyance passes any equitable interest the grantor may have in the land, although he have no legal interest: *White v. Butt*, 32-315, 345.

The dower interest of a wife is relinquished by a deed in which she

joins with her husband in the granting clause and covenants, although there is no express relinquishment of dower: *Edwards v. Sullivan*, 20-502.

SEC. 1931. Where a deed purports to convey a greater interest than the grantor was at the time possessed of, any after acquired interest of such grantor, to the extent of that which the deed purports to convey, enures to the benefit of the grantee. After acquired interest.
R. § 2210.
C. 51, § 1202.

This provision does not apply where a deed conveys the estate which the grantor at the time actually possessed, and he subsequently acquires a greater estate: *Collamer v. Kelley*, 12-319, 326.

In order that a conveyance may operate to pass an after acquired title, it must be so executed that it would have passed such title at the time of execution if the grantor had then had such title: *Heaton v. Fryberger*, 38-185.

Where the wife simply joins with the husband in a conveyance for the purpose of relinquishing her dower, an interest afterward acquired by her will not enure to the benefit of the

grantee in such conveyance. (See § 1937.): *Childs v. McChesney*, 20-431; *O'Neil v. Vanderburg*, 25-104.

Where A conveyed property to B without having title thereto, and subsequently C, the owner of the title, conveyed to A, taking from him a mortgage for a part of the purchase money, held, that although the title thus conveyed to A, vested at once in B, nevertheless C would be allowed to enforce his mortgage against the property in B's hands: *Morgan v. Graham*, 35-213.

Section applied, generally: *Rogers v. Hussey*, 36-664; *Belloeis v. Todd*, 39-209, 217.

SEC. 1932. Adverse possession of real property does not prevent any person from selling his interest in the same. Adverse possession.
R. § 2211.
C. 51, § 1203.

As things in action are assignable under our law, the reason of the common law rule, which prohibited a sale of property in the adverse possession of another, ceases, and it may

well be doubted whether the rule itself, independently of this section, should longer apply: *Foster v. Young*, 35-27, 40.

SEC. 1933. Estates may be created to commence at a future day. Future estates.
R. § 2212.
C. 51, § 1204.

SEC. 1934. Declarations, or creations of trusts or powers, in relation to real estate, must be executed in the same manner as deeds of conveyance; but this provision does not apply to trusts resulting from the operation or construction of law. Declarations of trust.
R. § 2213.
C. 51, § 1205.

An agreement of the trustee of a resulting trust, to hold as such, though not in writing, will not deprive such trust of the character imposed upon it by law: *Cotton v. Wood*, 25-43.

SEC. 1935. A married woman may convey or encumber any real estate or interest therein belonging to her, and may control the same, or contract with reference thereto, to the same extent and in the same manner as other persons. Married women may convey as other persons.
R. § 2215.
C. 51, § 1207.

[The following decisions were made under Rev., § 2215, which is not as broad as this section.]

A married woman may encumber or convey real property owned in her own separate right: *Sanborn v. Casady*, 21-77.

The mortgage of a married woman upon her separate property, to secure her husband's debt, if executed for a valuable consideration, would be binding: *Greene v. Scranton* 19-461.

A conveyance by a wife to her husband will be sustained if untainted by fraud and fairly obtained; so held, in case of relinquishment of dower upon covenant to separate: *Robertson v. Robertson*, 25-350; but a

contingent right of dower cannot, during coverture (aside from any question as to the effect of an agreement to separate) become the subject of valid grants and conveyances between husband and wife: *McKee v. Reynolds*, 26-578.

The power of a married woman to acquire by purchase, and contract with reference to real property, discussed and previous cases cited: *Shields v. Keys*, 24-293.

For the history of previous legislation as to the power of a married woman to convey, and the method of executing instruments in such cases, see *Simms v. Hervey*, 19-273.

When made by husband or wife: conveys title of both.
R. § 2235.

SEC. 1936. Every conveyance made by a husband and wife shall be deemed sufficient to pass any and all right of either in the property conveyed, unless the contrary appears on the face of the conveyance.

Where the title is in the wife and she joins her husband in a warranty deed conveying it, the addition of a clause releasing her right of dower

will not limit the estate conveyed by her to her dower interest: *Grapen-gether v. Fejervary*, 9-163.

Covenants: when binding.

SEC. 1937. In cases where either the husband or wife joins in a conveyance of real property owned by the other, the husband or wife so joining shall not be bound by the covenants of such conveyance, unless it is expressly so stated on the face thereof.

As to the wife, this is the rule generally recognized, aside from statute: | *Childs v. McChesney*, 20-431, 436.

Mortgagor retains possession.
R. § 2217.
C. § 1210.

SEC. 1938. In the absence of stipulations to the contrary, the mortgagor of real property retains the legal title and right of possession thereto.

The interest of the mortgagor in lands mortgaged, is an estate of inheritance: *White v. Rittenmyer*, 30-268.

The mortgaged property in the mortgagor's hands possesses all the incidents of real estate. It may be sold, will descend to heirs, and is subject to dower: *Barrett v. Blackmar*, 47-565.

The mortgagee does not have an

estate in the land, but simply a specific lien or charge thereon, to secure his debt: *Newman v. DeLorimer*, 19-244; *McHenry v. Cooper*, 27-137, 144.

A mortgagee is, at common law, entitled to the benefit of covenants running with the land, and that right is not affected by this section: *Decin v. Hendershott*, 32-192.

Tenancy in common.
R. § 2214.
C. § 1206.

SEC. 1939. Conveyances to two or more in their own right, create a tenancy in common unless a contrary intent is expressed.

When an estate is held by two or more in their own right, nothing being expressed to the contrary, the

tenancy is in common, and this rule applies in case of husband and wife: *Hoffman v. Stigers*, 28-302.

Vendor's lien.

SEC. 1940. No vendor's lien for unpaid purchase money shall be recognized or enforced in any court of law or equity after a conveyance by the vendee, unless such lien is reserved by conveyance, mortgage, or other instrument duly acknowledged and recorded, or unless such conveyance by the vendee, is made after

suit brought by the vendor, his executor, or assigns to enforce such lien. But nothing herein shall be construed to deprive a vendor of any remedy now existing against conveyances procured through the fraud or collusion of the vendees therein, or persons purchasing of such vendees with notice of such fraud.

Whether a vendor's lien, not preserved by title bond or other instrument, exists in this state, *quere*: *Porter v. City of Dubuque*, 20-440. But if it exists it is a mere equity, which cannot affect the rights of third persons attaching in ignorance of such lien: *Allen v. Loring*, 34-499.

But as between vendor and vendee, the existence of the lien is recognized: *Johnson v. McGrew*, 42-555; and this section is unconstitutional as applied to such liens existing before its passage: *Jordan v. Wimer*, 45-65.

The lien passes to the assignee of notes given for the purchase money as an incident thereof: *Blair v. Marsh*, 8-144.

The section applied: *Rotch v. Hussey*, 52-694.

In proposing this section the code commissioners say: "The so-called vendor's lien owes its existence to peculiarities of the English law of real estate which have never been adopted by us; and it not only lacks any reason for its perpetuation, but is directly at variance with the whole

spirit and interest of our system of land records. On these grounds it has been refused recognition by some American courts, even without legislative interposition, and although it has been sustained in Iowa ever since the important case of *Pierson v. David*, 1 Iowa 23, yet the objections to it have been strongly stated in the recent case of *Porter v. City of Dubuque*, 20 Iowa 440. Most of the Iowa cases usually cited to sustain it, are not authorities for the vendor's lien in the proper sense of the words, but only for the right which a vendor has to enforce payment after he has delivered possession, but before conveyance. With this latter right we of course do not propose to interfere. The amendment suggested only cuts off the secret lien, after an absolute conveyance, enforced in equity. The language of the court in *Porter v. City of Dubuque* certainly throws enough doubt over the doctrine to call for the interposition of the legislature to settle the question one way or the other, and we think there cannot be much hesitation in which way this should be." *Code Com'rs' Rep.*, p. 62.

CHAPTER 6.

THE CONVEYANCE OF REAL PROPERTY.

SECTION 1941. No instrument affecting real estate, is of any validity against subsequent purchasers for a valuable consideration, without notice, unless recorded in the office of the recorder of the county in which the land lies as hereinafter provided.

WHO ARE SUBSEQUENT PURCHASERS: A mortgagee is a *purchaser* within the meaning of this section: *Porter v. Green*, 4-571; *Seivers v. Delashmutt*, 11-174; *Barney v. McCarty*, 15-510; *Hewitt v. Rankin*, 41-35; *Patton v. Eberhart*, 52-67.

A purchaser by quitclaim deed is protected against prior unrecorded conveyances: *Pettigill v. Derin*, 35-344, 354. But contra, see *Smith v. Dunton*, 42-48; and held, that a purchaser by quitclaim from the holder

of a tax title which is void for fraud etc., is no^t protected: *Watson v. Phelps*, 40-482; *Besore v. Dosh*, 43-211; *Springer v. Bartle*, 46-688. (The apparent inconsistency in the cases as to quitclaims is reconciled in the case last cited.)

The holder of a judgment lien, or an attaching creditor, is not a purchaser, and his claim is subject to prior equities and unrecorded instruments: *Norton v. Williams*, 9-528; *Bell v. Evans*, 10-333; *Seivers v. De-*

Instrument affecting recorded.
R. 3 2220
C. 51, § 1211.

lashmunt, 11-174; *Welton v. Tizzard*, 15-495; *Hays v. Thode*, 18-51; *Savery v. Browning*, 18-246; *Chapman v. Coats*, 26-288.

A *third person* purchasing at a sale under a judgment, is protected as fully as if he had purchased and taken a deed from the judgment debtor: *Evans v. McGlasson*, 18-150; and the same is true, in the absence of controlling equities, as to a judgment creditor who becomes the purchaser at a sale under his judgment: *Ibid.*; *Halloway v. Platner*, 20-121; *Butterfield v. Walsh*, 21-97; *Wallace v. Bartle*, 21-346; *Walker v. Elston*, 21-529; *Gouer v. Doheney*, 33-36.

But this rule by which a purchaser at judicial sale is protected, applies only in case of a sale of the legal title. When the sale is of an equity, the purchaser takes only such equity, if any, as the defendant may actually have: *Wallace v. Bartle*, 21-346; *Churchill v. Morse*, 23-229.

The purchaser at judicial sale is bound to take notice of instruments recorded up to date of sale, although they may have been executed prior to the levy: *Chapman v. Coats*, 26-288; *Thomas v. Kennedy*, 24-397.

A purchaser from the heir is protected against a prior unrecorded deed of the ancestor: *McClure v. Tallman*, 30-515. But the heir himself is not protected: *Morgan v. Corbin*, 21-117.

The purchasers intended to be protected are those claiming under the *same chain of title*, and not those claiming under an *independent title*: *Rankin v. Miller*, 43-11.

"*WITHOUT NOTICE*:" A person having actual knowledge of an unrecorded instrument, is bound thereby as fully as if the same were properly recorded: *Dussaume v. Burnett*, 5-95, 104; *Wilson v. Holcomb*, 13-110; *Coe v. Winters*, 15-481, and see notes to following section; and the fact that he places his own instrument on record before the earlier one is recorded gives him no priority: *Bell v. Thomas*, 2-384.

A purchaser is charged with notice of anything appearing in any part of the deeds or instruments which prove and constitute the title, which is of such nature that if brought directly to his knowledge it would amount to actual notice: *The State v. Shaw*, 28-67; *Clark v. Stout*, 32-213.

A purchaser will be affected by such notice as would be sufficient to put a reasonable man upon inquiry:

English v. Waples, 13-57. Vague rumors and suspicions, or general assertions made by strangers to the title, upon hearsay, will not be sufficient. The notice must be such as to bind the conscience of the party and put him upon such inquiry as would lead to the knowledge of the rights with which he is to be affected. But if he know of such rights, or fraudulently abstain from knowing them, he is not a *bona fide* purchaser: *Wilson v. Miller*, 16-111, and see *Allen v. McCalla*, 25-464, 481.

EFFECT OF RECORDING: Recording is not essential to the validity of the instrument, as to parties and those having notice, nor to its competency as evidence: *Clark v. Connor*, 28-311, and see notes as to *notice, supra*, and as to *acknowledgment* under following section.

The fact that a purchaser is charged with record notice of one lien, does not affect him as to others not recorded. Though not a *bona fide* purchaser as to the one, he may be as to the others: *Koons v. Groores*, 20-373.

A fraudulent deed acquires no validity by recording, and does not bind a subsequent purchaser who has not actual notice: *Gardiner v. Cole*, 21-205.

A grantor who becomes liable on covenants running with the land, is charged with notice of subsequent conveyances or incumbrances of record, and cannot, by settlement with his immediate grantees, cut off the claims of subsequent parties: *Derin v. Hendershott*, 32-192.

ASSIGNMENT OF NOTE AND MORTGAGE: The assignment of a note secured by mortgage, carries the mortgage with it as an incident: *Crow v. Vance*, 4-434; *Pope v. Jacobus*, 10-262; *Sangster v. Love*, 11-580; and the assignor, the assignee and the mortgagor, will be charged with notice of such transfer; but as to third parties without notice, it is of no validity unless an assignment of the mortgage is acknowledged and recorded: *Bank, etc., of Indiana v. Anders*, 14-544.

The assignee of a note secured by mortgage can enforce such mortgage irrespective of any equities between his assignor and third parties: *Crosby v. Tanner*, 40-136; *Vandercook v. Baker*, 48-199.

IN GENERAL: The provisions of the state registration law have no application to conflicting entries of public lands. The recording of a

certificate of purchase from the U. S. or of a transfer thereof is unnecessary. The regulations established by congress will govern, until the title has passed from the government by patent: *Heirs, etc., v. Argensburg*, 26-493; *Davi v. Rickabaugh*, 32-540; *Harmon v. Clayton*, 51-36.

The fact that the grantor in a deed delivers it to the recorder for record, may be a circumstance, with others, tending to show fraud, but does not, of itself, as matter of law, make the deed fraudulent or void: *Ward v. Wehman*, 27-279.

SEC. 1942. It shall not be deemed lawfully recorded, unless it ^{Same.} R. § 2221. C. 51, § 1212. has been previously acknowledged or proved in the manner herein prescribed.

While the acknowledgment is necessary for the admission of the instrument to record, it is not essential to its validity as between the parties or as to persons having notice in fact: *Gould v. Woodward*, 4 Gr., 82; *Miller v. Chittenden*, 2-315, 360; *Blain v. Stewart*, 2-378; *Dussaume v. Burnett*, 5-55, 104; *Brinton v. Seavers*, 12-389; *Haynes v. Seachrest*, 13-455; *Carleton v. Byington*, 1 - 482; *Simms v. Herrey*, 19-273, 237; *Lake v. Gray*, 30-415.

As to what is sufficient to constitute

notice in fact, see notes to preceding section.

If an instrument is defective in the acknowledgment, the recording thereof does not impart constructive notice: *Willard v. Cramer*, 36-22; and the fact that the recorder, in recording an acknowledgment which is defective by reason of the omission of an essential word, inserts such word so that the record appears perfect, will not cure the defect: *Newman v. Samuels*, 17-528.

SEC. 1943. The recorder must keep an entry book or index, the pages of which are so divided as to show in parallel columns: ^{Recorder to keep index of records.} R. § 2222. C. 51, § 1213.

1. The grantors;
2. The grantees;
3. The time when the instrument was filed;
4. The date of the instrument;
5. The nature of the instrument;
6. The book and page where the record thereof may be found;
7. The description of the land conveyed.

See notes to next section.

SEC. 1944. The recorder must endorse upon every instrument properly filed in his office for record, the time when it was so filed, and shall forthwith make the entries provided for in the preceding section, except that of the book and page where the record of the instrument may be found, and, from that time, such entries shall furnish constructive notice to all persons of the rights of the grantee conferred by such instrument.

INDEXING AND RECORDING; WHAT ESSENTIAL: It is not essential to the validity of the indexing, that a particular description of the property should be entered in the column for that purpose. An entry such as "see record" or "part of lot", etc., will be sufficient: *Calvin v. Bouman*, 10-529; *Bostwick v. Powers*, 12-456; *White v. Hampton*, 13-259; *Hodgson v. Lovell*, 25-97. But where a mortgage covered two pieces of property and in the column of the index for description only one of them was entered, held, that the record was not constructive notice as to the piece not

described: *Noyes v. Horr*, 13-570.

So held, also, where the index gave an entirely erroneous description of the premises, and a wrong book and page of the record: *Breed v. Conley*, 14-269.

Where an instrument contained an entirely mistaken description, and the index contained the same description, held, that a purchaser might rely upon the index and was not chargeable with notice, although there were recitals in the instrument itself which might have put him on inquiry: *Scoles v. Wilsey*, 11-261.

The essentials of a valid entry in

the index considered, and under the facts of a particular case, *held* that a mistake in the index as to the page of the record was not sufficient to render the recording invalid as notice: *Barney v. Little*, 15-527.

An entire failure to index will render the record invalid: *Barney v. McCarty*, 15-510; *Gwynn v. Turner*, 18-1.

The recording of a mortgage in which the name of the mortgagor is left blank, does not constitute notice: *Disque v. Wright*, 49-538.

In case of a conveyance of the homestead in which the wife joins, it is not necessary that the index show the name of the wife as well as that of the husband: *Hodgson v. Lovell*, 25-97.

Where the legal title was in W. T. B., the wife, and both husband and wife joined in a mortgage, which was indexed under the name of W. H. B., the husband, as grantor, *held*, that the index was sufficient to put a searcher of title upon inquiry, and therefore would impart notice: *Jones v. Berkshire*, 15-248.

A conveyance signed J. A. S., was indexed and entitled in the caption of the record as made by A. J. S., and it appeared that the property was conveyed to the party as A. J. S., and she was in the habit of signing her name in either way; *held*, that the record constituted notice: *Huston v. Baker*, 48-199.

Seeley, 27-183.

A mortgage executed by "Furman" was indexed in the name of *Freeman*; *held*, that the record did not constitute notice, and that a purchaser need not look beyond the index: *Houce v. Thayer*, 49-154.

The instrument must not only be filed, but properly recorded. If incorrectly transcribed, the record will not constitute notice: *Miller v. Bradford*, 12-14.

THE RECORD NOTICE OF WHAT: The rights conferred by an instrument of which a subsequent purchaser has constructive notice only, are to be determined by the instrument itself as recorded and indexed, and not by facts *aliunde* or other instruments not recorded: *Miller v. Ware*, 31-524; *Disque v. Wright*, 49-538. But a person having constructive notice of an instrument is affected with all that it contains, and if thereby put upon inquiry he is bound to take notice of all that he might have learned by pursuing the path indicated: *Thomas v. Kennedy*, 24-397.

IMPEACHING RECORD: The record may be impeached by oral testimony, but will be held false and fraudulent only upon clear and satisfactory evidence: *Vandercook v. Baker*, 48-199.

EVIDENCE: The instrument properly acknowledged, receivable in evidence, see § 3659.

SEC. 1945. The entries in such entry book shall show the names of the respective grantors and grantees arranged in alphabetical order.

SEC. 1946. Every such instrument shall be recorded, as soon as practicable, in a suitable book to be kept by the recorder for that purpose; after which he shall complete the entries aforesaid, so as to show the book and page where the record is to be found.

SEC. 1947. The recorder shall record all deeds, mortgages, and other instruments affecting town lots in cities or villages, the plats whereof are recorded, in separate books from those in which other conveyances of real estate are recorded.

Arranged alphabetically.
R. § 2224.
C. § 1215.

Must be recorded.
R. § 2225.
C. § 1216.

Deeds of town lots recorded in separate books.
R. § 2241.

RECORDING LAND-GRANT TITLES.

[Eighteenth General Assembly, Chapter 186.]

SEC. 1. Each and every railroad company which owns or claims to own lands in the state of Iowa granted by the government of the United States or the state of Iowa, to aid in the construction of its railroad, where it has not already done so, shall place on file and cause the same to be recorded within three months after the taking effect of this act, in each county wherein the land[s] so granted are situated, evidence of its title or claim of title, whether the same

Railroad companies claiming under grant to place title on record.

shall consist of patents from the United States, or certificates from the secretary of the interior or governor of the state of Iowa, or the proper land office of the United States or state of Iowa. Where no patent was issued, reference shall be made in said certificate to the act or acts of congress, and the acts of the legislature of the state of Iowa granting such lands, giving the date of said acts, and date of their approval, under which claim of title is made; *provided*, that where the certificate of the secretary of the interior or the patents, as the case may be, contain lands situated in more than one county, *that* the register of the state land office shall, upon the application of any railroad company or grantee, prepare and furnish to be recorded, as aforesaid, a list of all the lands situated in any one county, so granted, patented or certified, and when so recorded said records, or a duly authenticated copy thereof may be introduced in any court as evidence as provided in section three thousand seven hundred and two of the code.

Certificate including lands situated in more than one county.

SEC. 2. Such evidence of title shall be filed with the recorder Duty of recorder. of deeds of the county in which the lands are situated, and it shall be the duty of the recorder to record the same and shall place an abstract thereof upon the index of deeds so as to show the evidence of title, and the evidence thereof shall be constructive notice to all persons provided in other cases of entries upon said index, and the recorder shall receive same fees as for recording other instruments. ¶

TRANSFER AND INDEX BOOKS.

SEC. 1948. The county auditor shall keep in his office, books County auditor to keep. for the transfer of real estate, which shall consist of a transfer book, 11 G. A. ch. 61,
§ 1. index book, and book of plats.

SEC. 1949. Said transfer book shall be ruled and headed substantially after the following form; and entries thereupon shall be in numerical order, beginning with section one.

SECTION NO. , TOWNSHIP. , RANGE

Grantee.	Grantor.	Date of instrument.	Description.	Page of Plats.
.....
.....
.....

THE INDEX BOOK THUS.

NAMES OF GRANTEES.	PAGES OF TRANSFER BOOK.
.....
.....
.....

Book of plats: how ruled and kept. Same, § 3. 12 G. A. ch. 160, § 3.

SEC. 1950. The auditor shall so keep the book of plats as to show the number of lot and block, or township and range, divided into sections and sub-divisions as occasion may require, and shall designate thereon each piece of land or town lot, and mark in pencil the name of the owner thereon in a legible manner. Said plats shall be lettered or numbered so that they may be conveniently referred to by the memoranda of the transfer book, and shall be drawn on a scale of not less than four inches to the mile.

Entries by auditor in index and transfer book. 11 G. A. ch. 61, § 4.

SEC. 1951. Whenever a deed of unconditional conveyance of real estate is presented, the auditor shall enter in the index book, in alphabetical order, the name of the grantee, and opposite thereto the number of the page of the transfer book on which such transfer is made; and upon the transfer book he shall enter in the proper columns, the name of the grantee, the name of the grantor, date of instrument, the character of the instrument, the description of the property, and the number or letter of the plat on which the same is marked.

Endorse deed. Same, § 6.

SEC. 1952. After the auditor has made the entries contemplated in the preceding section, he shall endorse upon the deed the following words: "Entered for taxation this day of A. D.," with the proper date inserted and sign his name thereto.

Cannot be filed for record until endorsed. 12 G. A. ch. 160, § 3.

SEC. 1953. The recorder shall not file for record any deed of real property, until the proper entries have been made upon the transfer books in the auditor's office and endorsed upon the deed.

Auditor correct. 11 G. A. ch. 61, § 8.

SEC. 1954. The auditor shall correct the transfer books from time to time, as he shall find them incorrect.

ACKNOWLEDGMENT OF DEEDS.

Manner of in the state. R. § 201. 2226. C. 51, § 84.

SEC. 1955. Any deed, conveyance, or other instrument in writing, by which real estate in this state shall be conveyed or encumbered, if acknowledged within this state, must be so before some court having a seal, or some judge or clerk thereof, or some justice of the peace or notary public.

An acknowledgment before a deputy clerk acting in the name of his principal is good: *Abrams v. Errin*, 9-87.

An acknowledgment certified to by an officer interested therein (as a member of the firm of grantees) is void and the record of such instrument will not impart notice: *Wilson v. Traer*, 20-231.

As to who may take acknowledgments, see also § 277.

The certificate of acknowledgment is strong, though not conclusive evidence of the execution of the instrument: See notes to § 1958.

When out of, but in the U.S. R. § 2245.

SEC. 1956. When made or acknowledged out of this state but within the United States, it shall be acknowledged before some court of record or officer holding the seal thereof, or before some commissioner appointed by the governor of this state to take the acknowledgment of deeds, or before some notary public or justice of the peace; and, when made by a justice of the peace, a certificate under the official seal of the proper authority of the official character of said justice, and of his authority to take such acknowledgments and of the genuineness of his signature, shall accompany said certificate of acknowledgment.

When no seal of the officer or certificate as to his official character is attached to the certificate of acknowledg-

ment, as here contemplated, it is not valid: *Jones v. Berkshire*, 15-248.

SEC. 1957. When made or acknowledged without the United States, it may be acknowledged before any ambassador, minister, secretary of legation, consul, charge d'affaires, consular agent, or any other officer of the United States in a foreign country who is authorized to issue certificates under the seal of the United States. Said instruments may also be acknowledged or proven before any officer of a foreign country who is authorized by the laws thereof to certify to the acknowledgments of written documents; but the certificate of acknowledgment by a foreign officer must be authenticated by one of the above named officers of the United States, whose official written statement that full faith and credit is due to the certificate of such foreign officer, shall be deemed sufficient evidence of the qualification of said officer to take acknowledgments and to certify thereto, and of the genuineness of his signature or seal if he have any. All instruments in writing already executed in accordance with the provisions of this section, are hereby declared effectual and valid in law, and to be evidence in any court of this state.

SEC. 1958. The court or officer taking the acknowledgment, must endorse upon the deed or other instrument, a certificate setting forth the following particulars:

1. The title of the court or person before whom the acknowledgment was taken;
2. That the person making the acknowledgment was personally known to at least one of the judges of the court, or to the officer taking the acknowledgment, to be the identical person whose name is affixed to the deed as grantor, or that such identity was proved by at least one credible witness, naming him;
3. That such person acknowledged the instrument to be his voluntary act and deed.

The certificate is not to the genuineness of the signature, but to the fact that the party acknowledged the instrument, and the acknowledgment is sufficient although the signature may have been written by another for the grantee: *Morris v. Sargent*, 18-91.

The certificate is *prima facie* evidence of the fact of acknowledgment, but is not conclusive, and may be overcome by other evidence, the burden being upon the party seeking to rebut the effect of the certificate: *Ibid.; Van Orman v. McGregor*, 23-300; *Borland v. Walrath*, 33-130.

The official title of a notary public is, "A B, a notary public for —— county," etc., and a failure to set forth the name of the county renders the certificate void. The fact that the name of the county appears from the impression of the seal will not remedy the defect: *Willard v. Cramer*, 36-22.

The essentials of a certificate of acknowledgment considered generally: *Bell v. Evans*, 10-353.

The omission of even an essential word, where it is apparently a mere clerical error, will not invalidate the certificate: *Sharfenburg v. Bishop*, 35-60.

The exact language of the statute need not be followed by the officer in his certificate, but words of the same import are sufficient: *Wickersham v. Reeres*, 1-413; *Tiffany v. Glover*, 3 Gr. 387; *Carender v. Heirs of Smith*, 5-157. Therefore, held, that the words "well known" were sufficient in place of "personally known," and the words "the within named," etc., sufficiently referred to the parties as being "the identical persons whose names are affixed," etc.: *Bell v. Evans*, 10-353.

A certificate which does not state that the party acknowledging the instrument was "personally known" to the officer "to be the identical

When out of
the U. S.
11 G. A. ch. 46.
14 G. A. ch. 32.

Certificate of
acknowledg-
ment.
R. § 22-7.
C. 51, § 1.1.

person," etc., or use words of similar import, is fatally defective: *Reynolds v. Kingsbury*, 15-238; *Brinton v. Seevers*, 12-389.

The omission of the word *personally* before "known" renders the certificate defective: *Gould v. Woodward*, 4 Gr. 82; but such omission is not fatal where the other words used necessarily imply personal knowledge in the official: *Todd v. Jones*, 22-146; *Rosenthal v. Griffin*, 23-263.

The word "voluntary" is of the essence of the acknowledgment, and in the absence of that or an equivalent word, the certificate will be invalid: *Wickersham v. Reeres*, 1-413; *Newman v. Samuels*, 17-528; but the fact that the party acknowledg-

edged the instrument to be his voluntary act and deed may be shown by the tenor and form of the certificate, as well as by the use of the very words of the statute: *Dickerson v. Davis*, 12-353.

Under act of 1840, prescribing the facts to which the officer must certify in an acknowledgment of release of dower by a married woman, held that when the certificate did not recite all the essential facts, it was not competent to prove such facts by extrinsic evidence: *O'Ferrall v. Simplot*, 4-381.

The instrument, when properly acknowledged, admissible in evidence, see § 3659.

SEC. 1959. Proof of the due execution and delivery of the deed or other instrument may be made before the court, or officer authorized to take acknowledgments, by one competent person other than the vendee or other person to whom the instrument is executed in the following cases:

1. If the grantor die before making the acknowledgment;
2. Or, if his attendance cannot be procured;
3. Or, if having appeared, he refuses to acknowledge the instrument.

[The words "may be" before "made" in the second line, as in the original, are omitted in the printed code.]

SEC. 1960. The certificate endorsed by them upon the deeds thus proved must state:

1. The title of the court or officer taking the proof;
2. That it was satisfactorily proved that the grantor was dead, or that for some other reason his attendance could not be procured in order to make the acknowledgment, or that having appeared he refused to acknowledge the deed or other instrument;
3. The names of the witnesses by whom proof was made, and that it was proved by them that the instrument was executed and delivered by the person whose name is thereunto subscribed as a party.

SEC. 1961. The certificate of proof or acknowledgment as aforesaid, may be given under seal or otherwise, according to the mode by which the courts or officers granting the same, usually authenticate their solemn and formal acts.

SEC. 1962. The execution of any deed, mortgage, or other instrument in writing, executed by any attorney in fact, may be acknowledged by the attorney executing the same.

SEC. 1963. The court or person taking the acknowledgment, must endorse upon such instrument a certificate setting forth the following particulars:

1. The title of the court or person before whom the acknowledgment was taken;
2. That the person making the acknowledgment was personally known to at least one of the judges of the court, or to the officer taking the acknowledgment, to be the identical person

Certificate:
what must
state.
R. § 2230.
C. 51, § 1222.

whose name is subscribed to the instrument as attorney for the grantor or grantors therein named, or that such identity was proved to him by at least one credible witness to him personally known and therein named;

3. That such person acknowledged said instrument to be the act and deed of the grantor or grantors therein named by him as his or their attorney thereunto appointed, voluntarily done and executed.

SEC. 1964. Any officer, who knowingly misstates a material fact in either of the certificates above contemplated, shall be liable for all damages caused thereby, and may be indicted and fined any sum not exceeding the value of the property conveyed or otherwise affected by the instrument on which such certificate is endorsed.

The officer is only liable for such | ful act and necessarily connected with damages as are caused by his wrong- | it: *Wyllis v. Haun*, 47-614.

SEC. 1965. Any court or officer having power to take the proof above contemplated, may issue the necessary subpoenas, and compel the attendance of witnesses residing within the county by attachment if necessary.

CONVEYANCES LEGALIZED.

SEC. 1966. All deeds and conveyances of lands lying and being within this state heretofore executed, and which said deeds have been acknowledged or proved according to and in compliance with the laws and usages of the state, territory, or country, in which said deeds or conveyances were acknowledged and proved, are hereby declared effectual and valid in law to all intents and purposes as though the same acknowledgments had been taken or proof of execution made within this state and in pursuance to the acts and laws thereof; and such deeds so acknowledged or proved as aforesaid, may be admitted to be recorded in the respective counties in which such lands may be, anything in the acts and laws of this state to the contrary thereof notwithstanding; and all deeds and conveyances of lands situated within this state, which have been acknowledged or proved in any other state, territory, or country, according to and in compliance with the laws and usages of such state, territory, or country, and which deeds or conveyances have been recorded within this state, be and the same are hereby confirmed and declared effectual and valid in law to all intents and purposes as though the said deeds or conveyances, so acknowledged or proved and recorded, had, prior to being recorded, been acknowledged or proved within this state.

Similar sections in Rev. held only | *Kingsbury*; 15-238, *Jones v. Berk-*
to apply to instruments acknowledged | *shire*, 15-248.
before they took effect: *Reynolds v.*

SEC. 1967. That the acknowledgments of all deeds, mortgages, or other instruments in writing, taken and certified previous to the thirtieth day of April, A. D. 1872, and which have been duly recorded in the proper counties in this state, be and the same are hereby declared to be legal and valid in all courts of law and

equity in this state or elsewhere, anything in the laws of the territory or state of Iowa in regard to acknowledgments to the contrary notwithstanding.

A curative act of this kind is not unconstitutional as interfering with vested rights, but it can only affect rights of third persons accruing after its passage and not those prior thereto: *Brinton v. Seavers*, 12-389; *New-*

man v. Samuels, 17-528.

The phrase "duly recorded" does not mean "legally recorded" but "actually recorded:" *Brinton v. Seavers, supra*.

When no seal affixed to certificate.
13 G. A. ch. 160, § 3.

SEC. 1968. All deeds, mortgages, or other instruments in writing, for the conveyance of lands which have heretofore been made and executed, and the officer taking the acknowledgment has not affixed his seal to the acknowledgment, such acknowledgment shall, nevertheless, be good and valid in law and equity, anything in any law heretofore passed to the contrary notwithstanding.

[Seventeenth General Assembly, Chapter 164.]

Acknowledgments by deputy clerks, auditors and deputy auditors.

SEC. 1. All acknowledgments of deeds heretofore taken and certified by any deputy clerk of court, county auditor or deputy county auditor within this state, be and the same are hereby declared to be legal and valid in law and equity.

[18th G. A., ch. 103, is similar to the foregoing. Being merely a legalizing act, and not general in form, it is omitted.]

POWER OF ATTORNEY.

Revocation of power of attorney: how made.
R. 2:234.
C. 31, § 1226.
9 G. A. ch. 123.

SEC. 1969. All instruments containing a power to convey, or in any manner to effect real estate, shall be held to be instruments affecting real estate; and no such instrument, when certified and recorded as above prescribed, can be revoked as to third parties by any act of the parties by whom it was executed, until the instrument containing such revocation is acknowledged and filed for record in the same office in which the instrument containing such power is recorded.

FORMS OF CONVEYANCES.

What sufficient.
R. 2:240.
C. 31, § 1232.

SEC. 1970. The following or other equivalent forms, varied to suit circumstances, are sufficient for the purposes therein contemplated:

FOR A QUIT CLAIM DEED.

For the consideration of dollars I hereby quit claim to A. B. all my interest in the following tracts of land (describing it).

FOR A DEED IN FEE-SIMPLE WITHOUT WARRANTY.

For the consideration of dollars I hereby convey to A. B. the following tract of land (describing it).

FOR A DEED IN FEE WITH WARRANTY.

The same as the last preceding form, adding the words "and I warrant the title against all persons whomsoever," (or other words of warranty as the party may desire.)

FOR A MORTGAGE.

The same as deed of conveyance, adding the following: "To be void upon conditions that I pay," etc.

The general covenant of warranty specified in the form for a warranty deed includes and implies the usual covenants in a deed of conveyance in fee simple including one against incumbrances; *Funk v. Creswell*, 5-62; and under this covenant the grantee has all the rights he would have had if the conveyance had contained express covenants of seizin, freedom from incumbrance, right to convey and the like: *Van Wagner v. Van Nostrand*, 19-422.

RECORDS TRANSCRIBED.

SEC. 1971. The board of supervisors of any county, whenever they shall deem it necessary and expedient, may have transcribed, indexed, and arranged, any deed, probate, mortgage, court, or county record or government survey belonging to said county, and have made a complete index thereof as contemplated by section nineteen hundred and forty-three of this chapter; and may have correctly transcribed or copied any index of deeds, mortgages, or other records, and may have the said transcripts or copies compared and certified by the officer to whose office the original record belongs, but the provisions of this section shall not apply to any county which has been specially authorized to have such transcribing done.

[As amended by 18th G. A., ch. 142.]

SEC. 1972. Whenever any new county shall have been formed from other original and organized counties, or shall have been attached to another county for judicial or other purposes, and shall afterwards be fully organized and detached, and when any records of the kind mentioned in the preceding section are in the original county or counties which properly belong to such new county, the board of supervisors of such new or attached county shall have authority to have transcribed, indexed, and arranged, such records, or any of them, for the use of such new county.

SEC. 1973. The board of supervisors may employ any suitable person to perform the labor contemplated in the two preceding sections; the amount of compensation therefor to be previously fixed by them, not exceeding six cents for each one hundred words of the records proper, and twelve and one-half cents for each one hundred words of indexing; such compensation to be paid out of the treasury of the county for which the records are transcribed and to be audited as other claims.

SEC. 1974. When any such records as are contemplated in section nineteen hundred and seventy-two are so transcribed the officer to whose office the original records belong, shall compare the copy so transcribed with the original; and, upon the same being found to be correctly transcribed, shall make a written certificate in each volume or book of such transcribed records, certifying that such transcribed records have been compared with the original by him, and are true and correct copies of the original records.

[As amended by 18th G. A., ch. 142.]

Force and effect of.
R. § 2262.
14 G. A. ch. 60.

Sec. 1975. Such transcribed records so certified, shall have the same force and effect in all respects as the original records, and be admissible as evidence in all cases, and of equal validity with the original records.

Duly certified copies of records etc. | receivable in evidence, see § 3702.

CHAPTER 7.

OF OCCUPYING CLAIMANTS.

Proceedings
R. § 2264.
C. 51, § 1233.

SECTION 1976. Where an occupant of land has color of title thereto, and in good faith has made any valuable improvements thereon, and is afterwards in a proper action found not to be the rightful owner thereof, no execution shall issue to put the plaintiff in possession of the property after the filing of the petition herein-after mentioned, until the provisions of this chapter have been complied with.

That a party may be an "occupant of land" as here contemplated, it is not necessary that he be in *personal* possession. A possession by tenant will suffice: *Parsons v. Moses*, 16-440; but a party *out of possession* cannot maintain the action. The right is lost by yielding the occupancy: *Webster v. Stewart*, 6-401; *Claussen v. Rayburn*, 14-136.

To entitle a claimant to the benefit of these provisions the possession under and during which the improvements were made must have been adverse to the holder of the paramount title: *Keas v. Burns*, 23-235.

Constructive notice of an adverse claim, especially such as is imparted by a *lis pendens* or record does not exclude good faith in the claimant: *Read v. Hoore*, 49-65.

Claims for improvements cannot be pleaded by way of counter claim, but only after the question of title has been settled: *Walton v. Gray*, 29-440.

The claim for improvements is assignable and the occupant may recover for improvements made by those under whom he claims: *Craton v. Wright*, 16-133; *Parsons v. Moses*, 16-440.

The occupying claimant is not entitled to compensation for improvements made after judgment against him in the main action, and after his proceedings under the occupying claimant law are commenced: *Craton v. Wright*, 16-133.

A claimant having color of title by five years occupancy (§ 1981) at the time judgment is recovered against him, may recover for his improvements, although they were made before the expiration of the period of possession necessary to constitute such color of title: *Litchfield v. Johnson*, 4 Dillon (U. S. C. C.) 551.

As against the claim for improvements, the owner may set off rents and profits of the land accruing prior to the six years to which his recovery in the action for the possession of the property is limited by § 3261, and also rents and profits subsequent to the judgment in such action, and pending the action by the occupying claimant for improvements: *Parsons v. Moses*, 16-440.

The occupant is not to be charged with the rent of improvements made by him, but with the rent of the land, estimated, however, not upon its rental value as he took it, but upon what the land has been worth to him, as brought into cultivation and made suitable for raising crops by his labor: *Dungan v. Von Puhl*, 8-263; *Wolcott v. Townsend*, 49-456.

As to setting off injury by cutting timber, etc., see § 1985.

The proceeding by the occupying claimant is ancillary to the main suit and cannot be removed to the federal court as separate from such main action: *Chapman v. Barger*, 4 Dillon (U. S. C. C.), 557.

SEC. 1977. Such petition must set forth the ground on which the defendant seeks relief, stating with other things, as accurately as practicable, the value of the improvements upon the lands, as well as the value of the lands aside from the improvements.

SEC. 1978. All issues joined thereon must be tried as in ordinary actions, and if the value of the land or the improvements is in controversy, such value must be ascertained on the trial.

The court in this proceeding has no authority to render a personal judgment against the owner of the

land for the value of the improvements: *Dungan v. Von Puhl*, 8-283; *Wolcott v. Townsend*, 49-456.

SEC. 1979. The plaintiff in the main action may thereupon pay the appraised value of the improvements, and take the property.

During the time when the owner has the election to pay for the improvements, the claimant in posses-

sion is a tenant at will: *Reilly v. Ringland*, 39-106.

SEC. 1980. Should he fail to do this after a reasonable time, to be fixed by the court, the defendant may take the property upon paying the value of the land aside from the improvements.

SEC. 1981. If this be not done within a reasonable time, to be fixed by the court, the parties will be held to be tenants in common of all the land, including the improvements, each holding an interest proportionate to the value of his property as ascertained by the appraisement above contemplated.

The act of 1858 (Rev. §§ 2274, 2275) which authorized a money judgment against the owner of the land for the value of improvements, on which, if

not paid within three years, a general execution might issue, held, unconstitutional: *Childs v. Shower*, 18-261.

SEC. 1982. The purchaser in good faith at any judicial or tax sale made by the proper person or officer, has color of title within the meaning of this chapter, whether such person or officer had sufficient authority to sell or not, unless such want of authority was known to such person at the time of the sale. And the rights of such purchaser shall pass to his assignees or representatives.

The grantee is an "assignee" within the meaning of this section: *Childs v. Shower*, 18-26 .

Unde may be received to show that the several tracts were not sold for a gross sum: *Ibid.*

When the tax deed relied on to show color of title, shows a sale in gross of distinct tracts, evidence al-

A tax deed void on its face is sufficient to give color of title: *Colvin v. McCune*, 39-502.

SEC. 1983. Any person has also such color of title, who has occupied a tract of land by himself, or by those under whom he claims, for the term of five years, or who has thus occupied the land for a less term than five years, if he, or those under whom he claims have, at any time during such occupancy, with the knowledge and consent, express or implied, of the real owner, made any valuable improvements thereon, or if he, or those under whom he claims have, at any time during such occupancy, paid the ordinary county taxes thereon for any one year, and two years thereafter have elapsed without a re-payment or proffer of re-payment of the same by the owner of the land, and such occupancy is continued up to the time at which the suit is brought by which the recovery of the land is obtained as above contemplated; but

nothing in this chapter shall be construed to give tenants color of title against their landlords.

Ocupancy in the claimant's own right for a term of five years gives the color of title required by § 1976. Such possession need not be based on any kind of right or title to the land: *Lunquest v. Ten Eyck*, 40-213.

A lessee of premises from one holding a life estate does not have color of title as against the reversioner, nor will the payment of taxes give him

such color of title if made in accordance with the terms of the lease: *Wiltse v. Hurley*, 11-473.

The vendee of real estate holding under a bond for a deed cannot take advantage of these provisions to recover from the vendor the value of improvements made while so holding: *Jones v. Graves*, 21-474.

Same.
13 G. A. ch. 88.

SEC. 1984. When any person shall have settled upon any lands within this state, and shall have occupied the same for three years under or by virtue of any law of said state, or any contract with its proper officers for the purchase of said land, or under any law of, or by virtue of any purchase from the United States, and shall have made valuable improvements thereon, and shall have been, or shall hereafter be, found not to be the true owner thereof, or not to have acquired a right to purchase the same from the state or the United states, such person shall be deemed an occupying claimant within the meaning of this chapter.

*Waste by
claimant.*
R. § 2270.
C. § 51, § 1241.

SEC. 1985. In the cases above provided for, if the occupying claimant has committed any injury to the land by cutting timber or otherwise, the plaintiff may set the same off against any claim for improvements made by such claimant.

As to setting off rents and profits, | see notes to § 1976.

Execution.
R. § 2272.
C. § 51, § 1248.

SEC. 1986. The plaintiff is entitled to an execution to put himself in possession of his property in accordance with the provisions of this chapter, but not otherwise.

*Removal of im-
provements.*
14 G. A. ch. 85.

SEC. 1987. Any person having improvements on any land heretofore granted to the state in aid of any work of internal improvement, including what is known as the Des Moines river lands, whose title to such land is questioned by another, shall be entitled to remove such improvements owned by him without injury otherwise to the land, at any time before he is evicted therefrom, or he may claim and have the benefit of this chapter by proceeding as herein directed.

CHAPTER 8.

THE HOMESTEAD.

Exempt.
R. § 2277.
C. § 51, § 1245.

SECTION 1988. Where there is no special declaration of the statute to the contrary, the homestead of every family, whether owned by the husband or wife, is exempt from judicial sale.

Property acquired and occupied by a widower without children, as a home for himself and mother, whom he supports, held to be exempt as a homestead: *Parsons v. Livingston*, 11-104. Purchase, payments and possession under bond for a deed, constitute su-

ficient ownership to make the property the homestead of such purchaser: *Stinson v. Richardson*, 44-373, 375.

A tenant in common may have a homestead right in his interest in the undivided premises: *Thorn v. Thorn*, 14-49; and even when he has only an equitable title thereto: *Hewitt v. Rankin*, 41-35, 44.

There may be a homestead right in a leasehold interest in real estate so as to render the assignment of the lease, by the husband alone, invalid: *Pelan v. DeBevard*, 13-53.

The exemption of the homestead is based upon its actual occupancy as such, and is not dependent upon the marking out and platting provided for in § 1998: *Yost v. Devault*, 9-60. Such marking and platting alone do not give property the character of a homestead; use by the family as a home is essential: *Cole v. Gill*, 14-527.

As to what occupancy is sufficient to constitute the homestead, also as to abandonment, etc., see § 1994.

A judgment under which a homestead is not liable to sale, does not attach as a *lien* thereon, and a conveyance of such homestead to a third person passes title free from such judgment: *Lamb v. Shays*, 14-567; *Cummings v. Long*, 16-41. But when, by abandonment, the homestead loses its character, the liens of prior judgments attach in the same

manner as the lien of a judgment attaches to property subsequently acquired by the judgment debtor: *Lamb v. Shays, supra*.

The homestead right is subordinate to the right of the vendor for unpaid purchase money: *Christy v. Dyer*, 14-438; *Cole v. Gill*, 14-527; *Burnap v. Cook*, 16-149.

The homestead right, if relied on as against a mortgage, must be pleaded in the foreclosure proceeding, and cannot afterwards be set up against a purchaser at a sale under the judgment recovered therein: *Haynes v. Meek*, 14-320.

Where a defendant failed to set up his homestead right in an action to charge his property with a lien, held, that he could not, after judgment, maintain an action to prevent the enforcement of such lien on the ground that he was ignorant of his rights; and that his minor children had no interest which could be interposed in that manner: *Collins v. Chantland*, 48-241.

The homestead law in force at the time a contract is made, enters into and becomes a part of it, and a subsequent repeal of the law will not impair the rights of parties thereunder: *Bridgman v. Wilcut*, 4 Gr. 563.

The homestead exemption is a part of the remedy, and is not to be regulated by the law of the place of contracting: *Helfenstein v. Care*, 3-287.

SEC. 1989. A widow or widower, though without children, shall be deemed a family while continuing to occupy the house used as such at the time of the death of the husband or wife.

Granting a divorce to the wife and giving her the custody of the children, held not to render the home-

stead in the hands of the husband liable to sale on execution: *Woods v. Davis*, 34-264.

SEC. 1990. A conveyance or encumbrance by the owner is of no validity unless the husband and wife, if the owner is married, concur in and sign the same joint instrument.

If husband and wife do not join, the conveyance is void, and the record thereof imparts no notice: *Higley v. Millard*, 43-586.

An agreement to convey, made by the husband or wife alone, is absolutely void, and a specific performance thereof cannot be enforced: *Yost v. Devault*, 9-60. Nor can damages for the breach of such contract be recovered from the party executing it: *Barnett v. Mendenhall*, 42-296; and see *Clark v. Evans*, 46-248.

The verbal assent of the wife to the assignment of the title bond under

which the homestead is held will not be binding: *Stinson v. Richardson*, 44-373; and the assignment by the husband alone of the lease by which the homestead is held will be invalid: See note to § 19:8.

Where there is an attempt to execute a proper instrument, which, however, is void by reason of defects in form, the parties may bind themselves by a ratification of such instrument, either expressed, or presumed from their acts: *Spafford v. Warren*, 47-47.

A purchase-money mortgage given

Head of family defined.
R. 2278.
C. 51, § 1246.

at the time of the acquisition of the homestead, to the vendor, is valid though executed alone by the party taking the legal title: *Christy v. Dyer*, 14-438.

The renewal by the husband of a debt, by an admission or new promise sufficient, under § 2-39, to take the case out of the statute of limitations, will also keep in force a mortgage given on the homestead to secure the same, although such renewal is without the wife's consent: *Mahon v. Cooley*, 36-479.

A conveyance by the husband, owner of the title, of a right of way for a railroad across the homestead, in which the wife does not join, is not necessarily invalid: *C. & S.W.R. Co. v. Scinney*, 38-182.

A mortgage upon the homestead, executed by the husband alone, is not binding upon him, even after the death of the wife; but if, in an action to foreclose, he fail to set up the homestead right, he is precluded from doing so afterward. If, however, at the time of such foreclosure, he have a second wife, who is not made a party, she is not thereby debarred from afterward asserting a homestead right in the property: *Larson v. Reynolds*, 13-579; but the wife is not a necessary party in every action affecting the homestead: *Ibid.*

SEC. 1991. The homestead is liable for taxes accruing thereon, and, if platted as hereinafter directed, is liable only for such taxes and subject to mechanic's liens for work, labor, or material, done or furnished exclusively for the improvement of the same, and the whole or a sufficient portion thereof may be sold to pay the same.

SEC. 1992. The homestead may be sold on execution for debts contracted prior to the purchase thereof, but it shall not in such case be sold except to supply the deficiency remaining after exhausting the other property of the debtor liable to execution.

"Prior to the purchase thereof" means prior to the time when the *homestead right* attaches by virtue of actual occupancy as a homestead. Debts contracted after the purchase of the property, but before it acquires the homestead character by occupancy as such, may be enforced against the property. The purchase with the mere intention to improve and use it as a homestead, does not give it the homestead character: *Hale v. Heaslip*, 16-451; *Hyatt v. Spearman*, 20-510; *Elston v. Robinson*, 23-208.

As between the parties, or as against persons chargeable with notice of the character of the debt, a judgment upon a debt contracted

The invalidity of a mortgage on the homestead executed by the husband alone, may be set up by a junior mortgagee, in a proceeding to foreclose the senior mortgage, although such defense is not intimated by the owners: *Alley v. Bay*, 9-509.

It is not necessary that the conveyance or incumbrance should specifically state that the property sought to be conveyed or incumbered is the homestead: *Babcock v. Hoey*, 11-375; *O'Brien v. Young*, 15-5. And where the wife joined with the husband in the execution of a mortgage releasing her right of dower, but nothing was said as to the homestead right, *held*, that the instrument was sufficient to bind the homestead: *Reynolds v. Morse*, 52-155, but *contra*, *Sharp v. Bailey*, 14-387.

The subsequent adoption of property as a homestead will not affect conveyances previously made: *Yost v. Devault*, 3-345.

The wife's interest in the homestead owned by her husband, is present, fixed and substantial, and sufficient to entitle her to redeem from tax sale: *Adams v. Beale*, 19-61.

The rights of the wife and family in the homestead cannot be affected by the fraudulent acts of the husband: *Eli v. Gridley*, 27-376.

Liable for taxes.
R. § 2280.
C. '51, § 1248.
9 G. A. ch. 173,
§ 9.

For debts contracted previous to purchase.
R. § 2281.
C. '51, § 1249.

prior to the time when the property acquired a homestead character, although not rendered until after that time, becomes a lien upon the homestead, and a party claiming under the homestead right (as by mortgage), is bound to ascertain when such right began, and whether it was prior to the debt on which the judgment was rendered: *Hale v. Heaslip, supra*; and where it does not appear from the judgment itself that the debt was contracted prior to the acquisition of the homestead, that fact may be shown by evidence *alibi*: *Delavan v. Pratt*, 19-429; *Phelps v. Finn*, 45-447.

The liability of the homestead to debts contracted before it acquires the

homestead character attaches at the time they are contracted, and not merely from the time judgment is rendered thereon: *Bills v. Mason*, 42-329.

Where a party has derived a pecuniary advantage from a wrong done by him, and it is competent for the person suing thereon to waive the tort and maintain action on an implied promise, the obligation to pay is a *debt* within the meaning of this section, from the time of the wrong; but if the wrong results in no pecuniary advantage and the action must be in tort, and sound only in damages, then the obligation is not a debt until ascertained by judgment: *Warner v. Cammack*, 37-642.

A homestead is liable to foreign as well as domestic debts created prior to its acquisition: *Laing v. Cunningham*, 17-510; *Brainard v. Van Kuren*, 22-261.

The homestead is liable for unpaid purchase money due thereon: *Curiosity v. Dyer*, 14-438; *Hyatt v. Spearman*, 20-510.

Where a debt contracted prior to the acquisition of the homestead has become barred, and is renewed by a new note given subsequent to such acquisition, the homestead remains liable: *Sloan v. Waugh*, 18-224.

A judgment creditor whose debt was contracted prior to the acquisition of the homestead, may redeem from an execution sale thereof: See § 3103 and notes.

A party claiming that the homestead is not liable, because other property has not been exhausted must make such fact appear. It is not necessary to negative that fact in the first instance in order to make the sale valid: *Hale v. Heaslip*, 16-451; *Sterens v. Myers*, 11-183.

The fact that a judgment creditor, under a claim prior to the homestead, has delayed until the other property of the debtor has been otherwise exhausted, will not release the homestead from his claim: *Dinegre v. Haun*, 14-240; and it is said by one judge (the others expressing no opinion) that the provision as to exhausting other property is directory only, and a sale of the homestead before other property is exhausted would not be invalid: *Ibid.*

"Other property of the debtor liable to execution" includes his interest in partnership property: *Lambert v. Powers*, 36-18.

Under Rev. § 2281 (including substantially the provisions of this and the following sections), *held*, that the execution of a mortgage on the homestead by the husband alone, to secure a debt contracted prior to its acquisition, created no additional burden so far as the rights of the wife were concerned, but was not valid as to innocent purchasers before judgment on the debt, and the recording thereof did not affect them with notice: *Higley v. Millard*, 45-586.

SEC. 1993. The homestead may be sold for debts created by written contract, executed by the persons having the power to convey and expressly stipulating that the homestead is liable therefor, but it shall not in such case be sold except to supply the deficiency remaining after exhausting the other property pledged for the payment of the debt in the same written contract.

When contract
stipulates it
may be sold.
R. § 2281.
C. § 51, § 1249.

The homestead cannot be rendered liable for the debts of its owner by mere verbal agreement to charge it with the payment thereof and to execute a writing to that effect, which by mistake is not done: *Rutt v. Howell*, 50-535; and a provision in a confession of judgment that execution may be issued thereon "against any property belonging to said defendants, homestead included," held, not sufficient to render the homestead liable: *Ibid.*

The written contract here specified need not be a mortgage or other conveyance; any writing containing necessary stipulations and executed by the proper persons is sufficient: *Foley v. Cooper*, 43-376.

The phrase "created by written contract" has reference to the manner in which the creation of the debt is to be evidenced rather than to the time when the liability arises. This section applies as well to debts evidenced by written contract subsequently to their creation as to debts so evidenced at the very time they are contracted: *Sterens v. Myers*, 11-183.

A subsequent purchaser of a homestead pledged by written contract for the payment of a debt cannot require that other property be exhausted before it is sold. That privilege pertains alone to the debtor. (Decided under Rev. § 2281, somewhat different from this): *Barker v. Rollins*, 30-412.

The right to compel a sale, as here provided, of other property before the homestead is sold, is not to be enforced by a cross-action, but by special direction in the execution, and may be set up in the answer or obtained upon a summary supplemental showing: *Ibid.*

Under Rev. § 2281, *held*, where the homestead was sold before other

property was exhausted, that the sale was properly set aside and a re-sale ordered: *Lay v. Gibbons*, 14-377; but where the sheriff offered the property in forty-acre tracts without receiving a bid, and then sold the whole, including the homestead, *h ld.* not irregular: *Burmeister v. Decey*, 27-468; *Brumbaugh v. Shoemaker*, 51-148.

**Extent of.
R. § 2282.
C. 51, § 1250.**

SEC. 1994. The homestead must embrace the house used as a home by the owner thereof, and if he has two or more houses thus used by him at different times and places, he may select which he will retain as his homestead.

The homestead character does not attach to property until it is actually occupied and used by the family as a home. The mere intention to occupy, though subsequently carried out, does not make the premises a homestead until there is actual residence: *Charles v. Lamberson*, 1-435; *Christy v. Dyer*, 14-438; *Elston v. Robinson*, 23-208; *Girans v. Dyer*, 47-414.

However, the premises do not lose the homestead character by being left for a merely temporary purpose: *Daris v. Kelley*, 14-523; even though in the absence of the owner they are rented to a tenant: *Robb v. McBride*, 28-386.

The length of time of the absence is not conclusive as to abandonment, but it is an important fact in determining the intention to return, where there are no other acts or circumstances indicating such intention: *Dunton v. Woodbury*, 24-74.

Stronger proof of abandonment is required where the tenement set up is claimed to have attached during actual occupancy, than where it arises when the party claiming the premises was not in actual possession: *Ibid.; Daris v. Kelley, supra.*

Where the owner leaves the premises and acquires a new home, it will be presumed that he intended to abandon the old homestead: *Davis v. Kelley, supra.*

An actual removal from the homestead with no intention to return, will forfeit the homestead right, even

though no new homestead be acquired, but where the removal is temporary and with intention to return, unless others have been misled thereby to their prejudice, it will not work a forfeiture of the homestead right. Facts discussed, *held* to indicate an intention to return: *Fyffe v. Beers*, 18-4.

An averment that the party has abandoned the homestead and is a non-resident, and a resident of another state, is sufficient to make out a *prima facie* case of abandonment; such fact would not be conclusive if there were an intention of returning, but such intention should be set up in the answer and need not be negatived in the petition: *Orman v. Orman*, 26-361.

The facts of a particular case *held* not to amount to an abandonment: *Stewart v. Brand*, 23-477.

Where the second and third stories of a building in a city were used by the owner as a home and the cellar and first story were rented for store purposes, *held*, that the portion rented as store-rooms might be sold under execution, while the portion used as a home would be exempt: *Rhodes v. McCormick*, 4-368; and *held* that the owners of the two portions of the premises were not tenants in common, but adjoining tenants, possessing separate and distinct interests: *McCormick v. Bishop*, 28-233.

**Same.
R. § 2283.
C. 51, § 1251.**

SEC. 1995. It may contain one or more lots or tracts of land, with the buildings thereon and other appurtenances, subject to the limitations contained in the next section, but must in no case embrace different lots and tracts unless they are contiguous, or unless they are habitually and in good faith used as part of the same homestead.

The homestead may contain tracts not contiguous, but it must appear that they are "used as part of the same homestead." It is not suf-

ficient for that purpose to show that the owner "used, worked, and occupied them:" *Reynolds v. Hull*, 36-394.

SEC. 1996. If within a town plat it must not exceed one half ^{Same.}
an acre in extent, and if not within a town plat it must not em- <sup>R. § 2284.
C. '51, § 1292.</sup>
brace in the aggregate more than forty acres. But if, when thus limited, in either case its value is less than five hundred dollars, it may be enlarged till its value reaches that amount.

This limitation as to size of homestead within a town plat does not apply unless the homestead is situated within the platted portion of the town. Though within the limits of a town, if it remain unplatted it may

be forty acres: *McDaniel v. Mace*, 47-509; and so held where the limits of a town were so extended as to include a homestead previously existing and which was not platted: *Finley v. Dietrick*, 12-516.

SEC. 1997. It must not embrace more than one dwelling house, ^{Same.}
or any other buildings except such as are properly appurtenant to <sup>R. § 2285.
C. '51, § 1253.</sup>
the homestead as such; but a shop or other building situated thereon, and really used and occupied by the owner in the prosecution of his own ordinary business, and not exceeding three hundred dollars in value, may be deemed appurtenant to such homestead.

The homestead cannot include buildings used as shops, etc., rented to tenants and a source of revenue: *Kurz v. Brusch*, 13-371.

SEC. 1998. The owner, or the husband or wife, may select the homestead and cause it to be marked out, platted, and recorded, as provided in the next section. A failure in this respect does not leave the homestead liable, but the officer having an execution against the property of such a defendant, may cause the homestead to be marked off, platted, and recorded, and may add the expense thence arising to the amount embraced in his execution.

Failure to plat does not render the homestead liable: *Nye v. Walliker*, 46-306; *Linscott v. Lamart*, 46-312.

A selection by the owner is not valid unless recorded, but if the homestead is not properly selected,

the officer should have it marked off, etc., and if he fail to do so a sale of any portion which might have formed a portion of the homestead, will be invalid: *White v. Rowley*, 46-680.

SEC. 1999. The homestead shall be marked off by fixed and visible monuments, and in giving the description thereof, the direction and distance of the starting point from some corner of the dwelling house, shall be stated. The description and plat shall then be recorded by the recorder in a book to be called the "homestead book," which shall be provided with a proper index.

SEC. 2000. The owner may, from time to time, change the limits of the homestead by changing the metes and bounds, as well as the record of the plat and description, or may change it entirely, but such changes shall not prejudice conveyances or liens made or created previously thereto, and no such change of the entire homestead, made without the concurrence of the husband or wife, shall affect his or her right or those of the children.

The lien of a judgment which has already attached, cannot be affected by a change of the homestead to property upon which it is a lien: *Elston v. Robinson*, 21-531.

Where the owner of two pieces of property changed his homestead from one to the other, held, that a judgment lien existing on the second would become a lien on the first; but that the homestead right in the second would be superior to such judgment lien, to the same extent that it was in the first: *Furman v. Dewell*, 35-170.

Where a party sells his homestead

with the intention of purchasing a new one, he will be allowed a sufficient time within which to exercise that right, and if he does not gain credit on account of the transaction, debts contracted in the interim cannot be enforced against the new homestead: *Benham v. Chamberlain*, 39-358.

A new homestead of no greater value than the old one, though purchased in part with proceeds of the old, and in part with other means, will be fully exempt to the same extent that the old one would have been: *Ibid.*

It is not necessary that the old homestead be sold for cash which is

immediately invested in a new one. The sale may be on time and if the intention is to invest the proceeds when realized, in the new, such proceeds will be exempt: *The Sale v. Geddis*, 44-537.

The new homestead is liable for debts contracted prior to the acquisition of the old one: *Bills v. Mason*, 42-329; but not for those contracted subsequently, and not put in judgment before the acquisition of the new one: *Pearson v. Minturn*, 18-36; *Sargent v. Chubbuck*, 19-37; *Robb v. McBride*, 28-386.

This section and the following applied: *Thompson v. Rogers*, 51-3-3.

New home-
stead exempt.
R. § 2289.
C. 51, § 1237.

SEC. 2001. The new homestead, to the extent in value of the old, is exempt from execution in all cases where the old or former homestead would have been exempt, but in no other, nor in any greater degree.

See notes to preceding section.

Disagreement
how settled.
R. § 2290.
C. 51, § 1258.

SEC. 2002. When a disagreement takes place between the owner and any person adversely interested, as to whether any land or buildings are properly a part of the homestead, the sheriff shall, at the request of either party, summon nine disinterested persons having the qualification of jurors. The parties then, commencing with the owner of the homestead, shall in turn strike off one juror each and shall continue to do so until only three of the number remain. These shall then proceed as referees to examine and ascertain all the facts of the case, and shall report the same with their opinion thereon to the next term of the court from which the execution or other process may have issued.

The reference here contemplated is not for the purpose of making a selection of the homestead, but to determine whether certain land claimed to be exempt, really is so: *White v. Rowley*, 46-630, 682.

Same.
R. § 2291.
C. 51, § 1259.

SEC. 2003. If either party fail to strike off jurors in the manner directed in the last section, the sheriff may strike off such jurors.

Saine.
R. § 2292.
C. 51, § 1260.

SEC. 2004. The court may also, in its discretion, refer the whole matter, or any part of it, back to the same referees, or to others to be selected in the same manner, or as the parties otherwise agree, giving them directions as to the report that is required of them.

Same.
R. § 2293.
C. 51, § 1261.

SEC. 2005. When the court is sufficiently possessed of the facts of the case, it shall make its decision, and may, if expedient, direct the homestead to be marked off anew, or a new plat and description to be made and recorded, and may take any further step in the premises which, in its discretion, it may deem proper for attaining the objects of this statute. It shall also award costs as nearly as may be in accordance with the practice observed in other cases.

Change of cir-
cumstances.
R. § 2294.
C. 51, § 1262.

SEC. 2006. The extent or appurtenances of the homestead as thus established, are liable to be called in question in like manner,

whenever a change in value or circumstances will justify such new proceeding.

SEC. 2007. Upon the death of either husband or wife, the survivor may continue to possess and occupy the whole homestead until it is otherwise disposed of according to law. Survivor to occupy.
R. 2225.
C. 51, § 1263.

The right of occupancy and possession conferred upon the survivor does not give any title which can be conveyed or become subject to the lien of a judgment: *Smith v. Eaton*, 50-488; *Meyer v. Meyer*, 23-359; *Butterfield v. Wicks*, 44-310; nor can the survivor change such homestead for another: *Size v. Size*, 24-580.

A survivor electing to retain the homestead in lieu of the distributive share, has only the right to use and occupancy during life, and has no interest which can survive to a second husband or wife: *Stevens v. Stevens*, 50-491.

A judgment against a surviving wife, recovered after the death of the husband, does not become a lien upon the homestead in her hands: *Briggs v. Briggs*, 45-318; *Nye v. Walliker*, 46-306.

The right of the survivor may be lost by abandonment of the homestead: *Butterfield v. Wicks*, 44-310; and after such abandonment it ceases to have the homestead character, and

the survivor becomes a tenant in common with other heirs, *Orman v. Orman*, 26-361, and partition among such heirs may be had: *Size v. Size*, 24-580. As to what will amount to abandonment, see notes to § 1994.

The surviving widow is entitled to control the rents and profits of the homestead while she remains in possession thereof: *Floyd v. Mosier*, 1-512.

The rights of the surviving wife are not affected by a subsequent marriage: *Nicholas v. Purczell*, 21-265.

The right of the survivor to possession and occupancy is not affected by the question as to which held the legal title or whether there was issue: *Burns v. Kees*, 21-257.

Where a divorce is granted to a wife, even with the custody of the children, the homestead in the husband's hands remains exempt: *Wood v. Davis*, 31-264.

While the survivor is entitled to occupancy, the heirs cannot interfere therewith, nor claim partition: *Dodds v. Dodds*, 26-311.

SEC. 2008. The setting off of the distributive share of the husband or wife in the real estate of the deceased, shall be such a disposal of the homestead as is contemplated in the preceding section. But the survivor may elect to retain the homestead for life in lieu of such share in the real estate of the deceased; but if there be no such survivor, the homestead descends to the issue of either husband or wife according to the rules of descent, unless otherwise directed by will, and is to be held by such issue exempt from any antecedent debts of their parents or their own.

The right of occupying the homestead or any part of it cannot be retained in addition to the distributive share: *Meyer v. Meyer*, 23-359; (explaining *Nicholas v. Purczell*, 21-265); *Butterfield v. Wicks*, 44-310; the survivor has only the right to retain such occupancy in lieu of so much of the distributive share, or such share may be set off to include the homestead (§ 2441); *Whitehead v. Conklin*, 48-478.

The survivor electing to retain the homestead for life thereby relinquishes the distributive share, but such relinquishment applies only to the one-third to which the survivor is entitled under § 2440, and not to the additional portion (one-sixth) which such survivor may be entitled to as

heir at law, under § 2455, provided there are no children: *Smith v. Zuckney*, 53-14.

The legal title of the homestead property, upon the death of the owner thereof, descends to the heirs of such owner, subject to the right of occupancy in the surviving husband or wife: *Burns v. Kees*, 21-257; *Cotton v. Wood*, 25-4.

Where the widow abandons the homestead, it descends as free from the debts of the ancestor as if she had been no widow: *Johnson v. Gaylord*, 41-362.

The heir holds the property free from any debts of the ancestor which could not have been enforced against it in his life-time, but it remains liable to debts contracted by the ancestor

Disposal of:
what deemed
descent.
R. 2226.
C. 51, § 1264.

prior to its acquisition as a homestead (\$ 1992); *Moninger v. Ramsey*, 4⁴ 368. Occupancy of such property by the heirs as a homestead, is not essential to its exemption, in their hands, from antecedent debts: *John-*

son v. Gaylord, supra.

The homestead right does not become extinct until the distributive share has been finally set off: *Burdick v. Kent*, 52-583.

When sold.
R. § 2207.
C. '51, § 1265.

SEC. 2009. If there is no such survivor or issue, the homestead is liable to be sold for the payment of any debts to which it might at that time be subjected if it had never been held as a homestead.

Devise of.
R. § 2208.
C. '51, § 1266.

SEC. 2010. Subject to the rights of the surviving husband or wife, as declared by law, the homestead may be devised like other real estate of the testator.

CHAPTER 9.

OF LANDLORD AND TENANT.

Apportionment
of rent.
R. § 2209.
C. '51, § 1267.

SECTION 2011. The executor of a tenant for life, who demises real property so held, and dies on or before the day on which the rent is payable, and a person entitled to rent dependent on the life of another, may recover the proportion of rent which had accrued at the time of the death.

Holding over.
R. § 2300.
C. '51, § 1268.

SEC. 2012. A tenant giving notice of his intention to quit the demised premises at a time named, and afterwards holding over, and a tenant or his assignee wilfully holding over the premises after the term, and after notice to quit, shall pay to the person entitled thereto the double rental value of the premises during the time he holds over.

[The word "double" is inserted in the fifth line in accordance with the list of "errata" given in the printed code, although it does not occur in the original rolls.]

Attornment:
when void.
R. § 2301.
C. '51, § 1269.

SEC. 2013. The attornment of a tenant to a stranger is void, unless made with the consent of the landlord, or pursuant to or in consequence of a judgment at law or in equity, or to a mortgagee after the mortgage has been forfeited.

As the mortgagor has the right of possession until foreclosure and the expiration of the right of redemption, the tenant cannot attorn to the mortgagee until the expiration of that time. "After the mortgage has been

forfeited." means, after the right of possession of the mortgagor has been cut off by the expiration of the period of redemption: *Mills v. Hamilton*, 49-105; *Mills v. Heaton*, 52-215.

Tenant at will.
R. § 2216.
C. '51, § 1208.

SEC. 2014. Any person in the possession of real property with the assent of the owner, is presumed to be a tenant at will until the contrary is shown.

A tenant holding over after the expiration of a lease for a year is a tenant at will, and not one from year to year, unless the consent of the landlord amounting to a renewal of the lease is shown: *City of Dubuque v. Miller*, 11-583.

A person in possession under a patol mining lease is a tenant at will and entitled to the notice to quit provided for in such cases by the next section: *Bush v. Sullivan*, 3 Gr. 344; *Beatty v. Gregory*, 17-109.

Where notice was served to ter-

minate a tenancy at will, but the defendant continued in possession for some years thereafter, held, that he did not stand in any different position after such notice: *Newell v. Sanford*, 13-191.

SEC. 2015. Thirty days' notice in writing is necessary to be given by either party, before he can terminate a tenancy at will; but when, in any case, a rent is reserved payable at intervals of less than thirty days, the length of notice need not be greater than such interval between the days of payment. In case of tenants occupying and cultivating farms, the notice must fix the termination of the tenancy to take place on the first day of March; except in cases of field tenants or croppers, whose leases shall be held to expire when the crop is harvested; provided, that in case of a crop of corn it shall not be later than the first day of December, unless otherwise agreed upon. But where an express agreement is made, whether the same has been reduced to writing or not, the tenancy shall cease at the time agreed upon, without notice.

Where a tenant was in possession under an agreement to occupy as long as he was in the employ of the landlord, held, that after leaving such employ he was a tenant holding over after the expiration of his lease, and not a tenant at will, and therefore was only entitled to three days' notice to quit before action of forcible entry and detainer. *Grosrenor v. Henry*, 27-269.

SEC. 2016. When such tenant cannot be found in the county, how served. the notice above required may be given to any sub-tenant or other person in possession of the premises, or if the premises be vacant, by affixing the notice to the principal door of the building, or in some conspicuous position on the land if there be no building.

SEC. 2017. A landlord shall have a lien for his rent upon all crops grown upon the demised premises, and upon any other personal property of the tenant which has been used on the premises during the term, and not exempt from execution, for the period of one year after a year's rent or the rent of a shorter period claimed falls due; but such lien shall not in any case continue more than six months after the expiration of the term.

The lien of the landlord is a security existing beforehand for the payment of the rent as it comes due. It attaches at the commencement of the lease or when the property is brought on the demised premises and not simply on the commencement of an action or on maturity of the rent: *Grant v. Whitcell*, 9-152; *Carpenter v. Gillespie*, 10-592; *Doane v. Garretton*, 24-351; and while the landlord can only enforce his lien for rent due (*Merritt v. Fisher*, 19-354), he may have an injunction to restrain the tenant from any wrongful or fraudulent acts tending to destroy his security, as by removing or disposing of property on the demised premises: *Garner v. Cutting*, 32-347.

Under the statute the landlord acquires a lien for the rent of the entire term from the commencement of the

lease upon all the property of the tenant then upon the premises, and upon all other property of his afterwards brought thereon, commencing as soon as it is brought: *Martin v. Stearns*, 52-345.

The provisions as to landlords' liens are not limited to leases of agricultural land. They apply also to leases of town property. The expression "used on the premises" is only intended to imply such use as is incident to the nature and purpose of the occupation of the premises and the object of the tenancy, and therefore, held, that the lien attached to cloths and goods of a merchant tailor, used for the purpose of sale and making up into garments for customers: *Grant v. Whitcell*, 9-152.

The expression "effected" as used in the next section means "en-

Notice to quit.
R. § 2218.
13 G. A. ch. 98.

Lien of land-
lord.
R. § 2302.
C. '51, § 1270.

forced." The lien exists before suit is brought. It seems, also, that in case of a stock of goods kept for sale the lien is upon the stock *en masse* and not in detail, and does not attach to such goods as are sold in the ordinary course of trade: *Ibid.*

The remedy here given is strictly statutory and takes the place of the common law right of distress. It only applies to real property, and cannot be used to enforce a claim for damages for failure to till; for breach of covenants, etc.: *Merritt v. Fisher*, 19-354.

The assignment of a lease carries with it the lien of the landlord, and all the remedies for its enforcement: *Haywood v. O'Brien*, 52-537; *Lufkin v. Preston*, 52-235.

While the claim for rent is held by the landlord and within the term of one year after it falls due, the lien is in force for his benefit: *Farwell v. Grier*, 38-83.

The landlord may set up a claim to property under his lien in a replevin suit therefor, brought by a third party against the tenant: *Edwards v.*

Cottrell, 42-194.

A purchaser of stock, etc., from a tenant on agricultural lands, who buys in good faith and without notice, is not affected by a landlord's lien: *Nesbit v. Bartlett*, 14-485.

The lien of the landlord is inferior to that of a recorded mortgage of personal property executed before such property is brought or used upon the leased premises, even when the mortgagor took his mortgage with notice, that the property was to be so used: *Jarchow v. Pickens*, 51-381.

The landlord's lien, held not waived by taking a mortgage on personal property, which was void against subsequent incumbrances by reason of not being recorded: *Pitkin v. Fletcher*, 47-53.

Where the rent is payable in a share of the crops, the landlord has a lien for such share, and when the tenant is to gather such share and does not, the landlord has a lien, also, for the value of the labor necessary to gather the same: *Secrest v. Stivers*, 35-580.

How effected:
attachment.
R. § 2303.
C. 51, § 1271.

SEC. 2018. The lien may be effected by the commencement of an action within the period above prescribed for the rent alone, in which action the landlord will be entitled to a writ of attachment, upon filing with the proper clerk, or the justice, an affidavit that the action is commenced to recover rent accrued within one year previous thereto upon premises described in the affidavit.

The landlord may bring his action for rent and have his lien established without asking or having an attachment: *Bartlett v. Gaines*, 11-95.

CHAPTER 10.

OF WALLS IN COMMON.

When built on
the land of an
other.
R. § 1914.

SECTION 2019. In cities, towns, and other places surveyed into building lots, the plats whereof are recorded, he who is about to build contiguous to the land of his neighbor, may, if there be no wall on the line between them, build a brick or stone wall at least as high as the first story, if the whole thickness of such wall above the cellar wall does not exceed eighteen inches, exclusive of the plastering, and rest the one-half of the same on his neighbor's land; but the latter shall not be compelled to contribute to the expense of said wall.

The provisions of this chapter give to the owner, building upon his own land, an easement upon the land of his neighbor for the purpose of rest-

ing one-half his wall thereon, and give to the other party an easement in the wall upon paying one-half its value, but until such payment by the

latter, the original builder is the owner of the entire wall. The party building and owning the wall cannot so deal with it as to diminish its capacity for serving as a wall in common without the consent of his neighbor upon whose land it partly rests, and he cannot, therefore, make openings in it: *Sullivan v. Grafford*, 35-531.

The resting of one-half of a party wall upon a vacant lot does not constitute an incumbrance thereon. In such a case it will be presumed that the wall belongs to the party building and using it, but when the owner of such lot builds thereon and makes use of the wall, it will be presumed on conveyance that he has paid for his share thereof: *Bertram v. Curtis*, 31-46.

The right to the one-half of the wall which stands on the neighboring lot, when the owner thereof has not

contributed to its erection or paid for it, is a right not personal with the builder, but passes by a conveyance of the lot on which the building is erected, and such grantee, and not the original builder, may maintain action for the value of a half interest in the wall against the owner of the adjoining lot, who subsequently makes use thereof: *Thomson v. Curtis*, 25-229.

A party building a wall is not bound to build it stronger than sufficient to support another building like his own: *Gilbert v. Woodruff*, 40-320.

These provisions as to party walls are probably but declaratory of the common law: *Zugenbuhler v. Gilham*, 31-391.

This chapter as to walls in common is taken from the civil code of Louisiana: See note to *Bertram v. Curtis*, 31-46.

SEC. 2020. If his neighbor be willing, and does contribute one-half of the expense of building such wall, then it is a wall in common between them; and if he even refuses to contribute to the building of such wall, he shall yet retain the right of making it a wall in common, by paying to the person who built it one-half of the appraised value of said wall at the time of using it.

SEC. 2021. No wall shall be built by any person partly on the land of another with any openings therein, and every wall being a separation between buildings, shall, as high as the upper part of the first story, be presumed to be a wall in common, if there be no titles, proof, or mark to the contrary; and if any wall is erected, which, under the provisions of this chapter, becomes, or may become at the option of another, a wall in common, such person shall not be compelled to contribute to the expense of any openings therein, but the same shall be closed at the expense of the owner of such wall.

SEC. 2022. The repairs and rebuilding of walls in common are to be made at the expense of all who have a right to the same, and in proportion to the interest of each therein; nevertheless, every co-proprietor of a wall in common may be exonerated from contributing to the repairs or building, by giving up his right in common if no building belonging to him be actually supported by the wall thus held in common.

SEC. 2023. Every co-proprietor may build against a wall held in common, and cause beams or joists to be placed therein, and any person building such a wall, shall, on being requested by his co-proprietor, make the necessary flues, and leave the necessary bearings for the joists or beams, at such height and distance apart, as shall be specified by his co-proprietor.

SEC. 2024. Every co-proprietor is at liberty to increase the height of the wall in common; but he alone is to be at the expense of raising it, and of repairing and keeping in repair that part of the wall above the part so held in common.

Contribution by owners.
R. § 1915.

Openings in presumption.
R. § 1916.

Repairs: expense apportioned.
R. § 1917.

Beams, joists and flues.
R. § 1918.

Rebuilding:
expenses.
R. § 1920.

SEC. 2025. If the wall so held in common cannot support the wall to be raised upon it, he who wishes to have it made higher, is bound to rebuild it anew entirely and at his own expense, and the additional thickness of the wall must be placed entirely on his own land.

Same.
R. § 1921.

SEC. 2026. The person who did not contribute to the heightening of the wall held in common, may cause the raised part to become common by paying one-half of the appraised value of such raising, and half of the value of the grounds occupied by the additional thickness of the wall, if any ground was so occupied.

Same.
R. § 1922.

SEC. 2027. Every proprietor joining a wall, has, in like manner, the right of making it a wall in common, in whole or in part, by repaying to the owner of the wall one-half of its value, or the one-half of the part which he wishes to hold in common, and one-half of the value of the ground on which it is built, if the person who has built the wall has laid the foundation entirely upon his own ground.

Cavities: fixtures.
R. § 1923.

SEC. 2028. Neither of the two neighbors can make any cavity within the body of the wall held by them in common; nor can either affix to it any work without the consent of the other, or without having, on his refusal, caused the necessary precautions to be used so that the new work be not an injury to the rights of the other, to be ascertained by persons skilled in building.

Disputes: delay; bonds.
R. § 1924.

SEC. 2029. No dispute between neighbors, as to the amount to be paid by one or the other, by reason of any of the matters treated of in this chapter, shall delay the execution of the provisions of the same, if the party on whom the claim is made shall enter into bonds, with security, to the satisfaction of the clerk of the district court of the proper county, conditioned that he shall pay to the claimant whatever may be found to be his due on the settlement of the matter between them, either in a court of justice or elsewhere; and the said clerk of the district court is hereby required to endorse his approval on said bond when the same is approved by him, and retain the same in his custody until demanded by the opposite party.

Agreements.
R. § 1925.

SEC. 2030. This chapter shall not prevent adjoining proprietors from entering into special agreement about walls on the lines between them; but no evidence of such agreement shall be competent unless it be in writing, signed by the parties thereto, or their lawfully authorized agents, and whenever such proprietor is a minor, the guardian of his estate shall have full authority to act in all matters relating to walls in common.

A contract which is the same in fact as that which the law makes for the parties is not within the meaning of this section: *Wickersham v. Orr*, 9-253.

CHAPTER 11.

OF EASEMENTS IN REAL ESTATE.

SECTION 2031. In all suits hereafter brought, in which title to any easement in real estate shall be claimed by virtue of adverse

possession of the same for the period of ten years or by prescription, the use of the same shall not be admitted as evidence that the party claimed the easement as his right, but the fact of adverse possession shall be proved by evidence distinct from and independent of the use, and that the party against whom the claim is made had express notice thereof; and these provisions shall apply to public as well as private claims.

Use of a highway following a dedication thereto will be presumed to be under the dedication, and therefore adverse: *Gerberling v. Wunnenberg*, 51-125.

This and the four following sections are taken from a statute in force in Massachusetts and Rhode Island: *Code Com'r's Rep.*

SEC. 2032. Whoever has erected, or may erect, any house or other building near the land of another person with windows overlooking such land, shall not, by mere continuance of such windows, acquire any easement of light or air, so as to prevent the erection of any building thereon. Light and air.

SEC. 2033. No right of foot way, except claimed in connection with a right to pass with carriages, shall be acquired by prescription or adverse use for any length of time.

SEC. 2034. When any person is in the use of a way, or other easement or privilege in the land of another, the owner of the land in such case may give notice in writing to the person claiming or using the way, easement, or privilege, of his intention to dispute any right arising from such claim or use, and such notice served and recorded as hereinafter provided shall be deemed an interruption of such use, and prevent the acquiring of any right thereto by the continuance of such use for any length of time thereafter. Such notice, signed by the owner of the land, his guardian, or agent, may be served like a notice in a civil action, on the party, his agent, or guardian, if within this state, otherwise on the tenant or occupant, if there be any; such notice, with the return thereon, shall be recorded within three months thereafter in the recorder's office of the county in which the land is situated, and a copy of such record, certified by the recorder to be a true copy of the record of said notice, and the officer's return thereon shall be evidence of the notice and service of the same.

SEC. 2035. When notice is given to prevent the acquisition of a right to a way or other easement as aforesaid; such notice shall be considered so far a disturbance of such right or claim, as to enable the party claiming to bring an action for disturbing the same in order to try such right, and if the plaintiff in such suit prevails he shall recover full costs.

SEC. 2036. The provisions of this chapter shall not apply to easements already acquired.

TITLE XIV.

OF TRADE AND COMMERCE.

CHAPTER 1.

OF WEIGHTS, MEASURES, AND INSPECTION.

**Standard of
G. A. ch. 82,
§ 1.** SECTION 2037. The standard weights and measures now in charge of the secretary of state, being the same that were furnished to this state by the government of the United States, shall be the standard of weights and measures throughout the state.

**Vari
Same, § 2.** SEC. 2038. The unit or standard measure of length and surface from which all other measures of extension, whether they be lineal, superficial, or solid, shall be derived and ascertained, shall be the standard yard now in possession of the secretary of state and furnished by the government of the United States.

**Division of
Same, § 3.** SEC. 2039. The yard shall be divided into three equal parts called feet, and each foot into twelve equal parts called inches. For the measure of cloths and other commodities commonly sold by the yard, it may be divided into halves, quarters, eighths, and sixteenths.

**Rod, pole, or
perch.
Same, § 4.** SEC. 2040. The rod, pole, or perch, shall contain five and a half such yards, and the mile, one thousand seven hundred and sixty such yards; the chain for measuring land shall be twenty-two yards long, and shall be divided into one hundred equal parts called links.

**Land measure.
Same, § 5.** SEC. 2041. The acre for land measure shall be measured horizontally, and contain ten square chains, and shall be equivalent in area to a rectangle sixteen rods in length and ten in breadth; six hundred and forty such acres being contained in a square mile.

**Avoirdupois
and troy
pound.
Same, § 6.** SEC. 2042. The units or standards of weight from which all other weights shall be derived and ascertained, shall be the standard avoirdupois and troy weights as furnished this state by the United States.

**How divided.
Same, § 7.** SEC. 2043. The avoirdupois pound, which bears to the troy pound the ratio of seven thousand to five thousand seven hundred and sixty, shall be divided into sixteen equal parts called ounces; the hundred weight shall consist of one hundred avoirdupois pounds, and twenty hundred weight shall constitute a ton. The troy ounce shall be equal to the twelfth part of a troy pound.

**Liquids: meas-
ure of.
Same, § 8.** SEC. 2044. The unit or standard measure of capacity for liquids from which all other measures of liquids shall be derived and ascer-

tained, shall be the standard gallon, and its parts, as furnished this state by the government of the United States.

SEC. 2045. The barrel shall be equal to thirty-one and a half barrels; hogshead. Same, § 9.

gallons, and two barrels shall constitute a hogshead. SEC. 2046. The unit or standard measure of capacity for substances not being liquids, from which all other measures of such substances shall be derived and ascertained, shall be the standard Substances other than liquids. Same, § 10.

half-bushel furnished this state by the United States.

SEC. 2047. The peck, half-peck, quarter-peck, quart, and pint Peck: divisions measures for measuring commodities which are not liquids, shall Same, § 11. be derived from the half bushel by successively dividing that measure by two.

SEC. 2048. All contracts hereafter made within this state for Contracts: work to be done, or for anything to be sold or delivered by weight construction. Same, § 12.

or measure, shall be taken and construed according to the standards of weight and measure hereby adopted as the standard of this state.

[The words "or delivered" in the second line, as they stand in the original, are omitted in the printed code.]

Where a written contract for masonry work stipulated that it should be done at \$3.50 per perch ; Rutledge, 19-388. held, that it was not proper to show

SEC. 2049. A bushel of the respective articles hereafter mentioned will mean the amount of weight in this section specified ; Bushel : what constitutes. R. §§ 1778, 1781-4.

that is to say :

Of wheat, sixty pounds ; C. '51, § 940.

Of shelled corn, fifty-six pounds ; 14 G. A. ch. 56.

Of corn in the cob, seventy pounds ;

Of rye, fifty-six pounds ;

Of oats, thirty-two pounds ;

Of barley, forty-eight pounds ;

Of potatoes, sixty pounds ;

Of beans, sixty pounds ;

Of bran, twenty pounds ;

Of clover seed, sixty pounds ;

Of timothy seed, forty-five pounds ;

Of flax seed, fifty-six pounds ;

Of hemp seed, forty-four pounds ;

Of buckwheat, fifty-two pounds ;

Of blue grass seed, fourteen pounds ;

Of castor beans, forty-six pounds ;

Of dried peaches, thirty-three pounds ;

Of dried apples, twenty-four pounds ;

Of onions, fifty-seven pounds ;

Of salt, fifty pounds ;

Of stone coal, eighty pounds ;

Of coke, thirty-eight pounds ;

Of charcoal, twenty pounds ;

Of sweet potatoes, forty-six pounds ;

Of lime, eighty pounds ;

Of sand, one hundred and thirty pounds ;

Of Hungarian grass seed, forty-eight pounds ;

Of millet seed, forty-eight pounds ;

Of Osage orange seed, thirty-two pounds;
 Of sorghum saccharatum seed, thirty pounds;
 Of broom-corn seed, thirty pounds;
 Of apples, peaches, or quinces, forty-eight pounds;
 Of cherries, grapes, currants, or gooseberries, forty pounds;
 Of strawberries, raspberries, or blackberries, thirty-two pounds.

[As amended by 16th G. A., ch's 52 and 89; 17th G. A., ch. 42, and 18th G. A., ch. 21.]

Perch: mason work.

R. § 1777.
C. 51, § 889.

SEC. 2050. The perch of mason work or stone, is hereby declared to consist of twenty-five feet cubic measure.

Aside from statute the amount of a perch is quite uncertain. The express provisions of the statute as to quantity

Hops: boxes for.
12 G. A. ch. 195, § 4.

SEC. 2051. The standard size for all boxes used in packing hops, shall be thirty-six inches long, eighteen inches wide, and twenty-three and one-fourth inches deep, inside measure.

Superintendent.
y G. A. ch. 82, § 13.

Duty of.
Same, § 14.

Procure copies of standards.
Same, § 16.

Impressions on weights furnished by him.
Same, § 22.

SEC. 2052. A superintendent of weights and measures for this state, who shall be a scientific man, of sufficient learning and mechanical tact to perform the duties of his office, shall be appointed by the governor from the board of professors of the Iowa state university, and shall hold his office during the pleasure of the governor, and shall give a bond in the penal sum of five thousand dollars for the faithful discharge of his duties.

SEC. 2053. The superintendent shall take charge of the standards adopted hereby, and see that they are deposited in the building built for this purpose now belonging to the state, from which they shall in no case be removed, and take all necessary precautions for their safe-keeping. He shall provide the several counties with such standards, balances, and other means of adjustment, as may be ordered by them, and as often as once in ten years and compare the same with those in his possession. He shall, moreover, have a general supervision of the weights and measures of the state.

SEC. 2054. He shall procure and keep for the state a complete set of copies of the original standard of weights and measures adopted hereby, which shall be used for adjusting the county standards, and in no case shall the original standards be used for any other purpose than the adjustment of this set of copies. He shall also procure and keep such apparatus and fixtures as are necessary in the comparison and adjustment of county and town standards.

SEC. 2055. The state superintendent of weights and measures, shall cause to be impressed upon all standards of weights and measures furnished by him, the word "Iowa," and such other devices as he shall direct for the particular county, city, or incorporated town, and the county sealers shall see that, in addition to the above device, there is impressed on the town and city standards such other device as the board of supervisors shall direct for the several cities and incorporated towns.

SEC. 2056. Whenever the state superintendent of weights and measures shall resign, be removed from office, or remove from Iowa City, or whenever any city, county, or incorporated town sealer shall resign, be removed from office, or remove from the city, county, or town in which he shall have been appointed or elected, the person so resigning, removed, or removing, shall deliver to his successor in office all the standard beams, weights, and measures in his possession.

Resignations:
duty of suc-
cessors.
Same, § 24.

SEALER.

SEC. 2057. The board of supervisors of any county may, at any regular meeting, provide for obtaining from the state superintendent of weights and measures, such standards of weights and measures as they may deem necessary for their county, and in case they order such standards, they shall appoint a county sealer of weights and measures, who shall hold his office during the pleasure of the board.

Weights and
measures pro-
cured: county
sealer ap-
pointed.
Same, § 17.

SEC. 2058. The county sealer shall take charge of the county standards and standard balances, and provide for their safe keeping; shall provide cities and incorporated towns with such standard weights and measures, and standard balances, as may be wanting, and shall compare the cities and incorporated towns standards with those in his possession as often as once every five years.

Duty of sealer.
Same, § 18.

SEC. 2059. A sealer of weights and measures may be appointed in every city and incorporated town by the town council thereof, and shall hold his office during their pleasure, and said council may obtain from the sealers of weights and measures of their respective counties, such standards of weights and measures as they may deem necessary for their respective cities or incorporated towns; and in case the board of supervisors of any county in which any city or town may be situated shall not have obtained such standards, then said council may obtain the same from the state superintendent of weights and measures.

Cities and
towns: sealer
appointed for.
Same, § 19.

SEC. 2060. Each sealer in cities and incorporated towns shall take charge and provide for the safe keeping of the town or city standards, and see that the weights, measures, and all apparatus used for determining the quantity of commodities used throughout the town or city, which shall be brought to him for that purpose, agree with those standards in his possession.

Duty of.
Same, § 20.

SEC. 2061. All expenses directly incurred in furnishing the several counties, cities, and incorporated towns with standards, or in comparing those that may be in their possession, shall be borne by the respective counties, cities, and incorporated towns for which such expenses shall have been incurred.

Expenses.
Same, § 21.

SEC. 2062. In case of the death of any such sealer of weights and measures, his representatives shall, in like manner, deliver to his successor in office such beams, weights, and measures.

Death of sealer.
Same, § 25.

SEC. 2063. In case of refusal or neglect to deliver such standards entire and complete, the successor in office may maintain an action against the person or persons so refusing or neglecting, and recover for the use of such county, city, or incorporated town, double the value of such standards as shall not have been deliv-

Penalty for re-
fusing to de-
liver weights
to successor.
Same, § 26.

Penalty for
using weights
or measures
that do not
conform to
standard.
Same § 27.

ered. And in every such action in which judgment shall be rendered for the plaintiff, he shall recover double costs.

SEC. 2064. If any person or persons shall hereafter use any weights, measures, beams, or other apparatus, for determining quantity of commodities, which shall not be conformable to the standards of this state, in any counties whose standards have been obtained by the board of supervisors, or in any city or incorporated town after such standards have been obtained therein, whereby any person shall be injured or defrauded, he shall be subject to a fine not exceeding five dollars for each offense, to be sued for and collected by the city, county or town sealer. He shall also be subject to an action at law, in which the defrauded person shall recover treble damages and costs, and every person keeping any store, grocery, or other place, for the sale or purchase of such commodities as are usually sold by weight or measure, shall, once in each year, procure the weights and measures used by him to be compared with the standard herein provided; and he shall be subject to a fine of five dollars for every neglect to comply with this provision, to be recovered by any one who shall prosecute therefor.

WEIGHMasters OF PUBLIC SCALES.

Oath: definition
of public
scales.
10 G. A. ch. 56.
§ 1.

SEC. 2065. All persons keeping public scales, before entering upon their duties as weighmasters, shall be sworn before some person having authority to administer an oath, to keep their scales correctly balanced; to make true weights; and to render a correct account to the person or persons having weighing done. Every scale shall be deemed a public one for the use of which a charge is made.

Make correct
weights: keep
register: give
certificate.
Same, § 2.

SEC. 2066. All weighmasters are required to make true weights and to keep a correct register of all weighing done by them, giving the amount of each weight, date of weighing, and the name of the person or persons for whom such weighing was done, and to give upon demand, to any person or persons having weighing done, a certificate, showing the weight, date of weighing, and for whom weighed.

For weighing
stock or grain:
standard pro-
cured.
14 G. A. ch. 129.
§ 1.

SEC. 2067. Weighmasters, or keepers of public scales kept for the purpose of weighing stock or grain, shall provide and keep a standard of weight not less than fifty pounds avoirdupois for the purpose of testing such scales, and they shall at least once a month, or oftener if requested, make a satisfactory test of the correctness of such scales.

Penalty.
10 G. A. ch. 56,
§ 8.
14 G. A. ch. 129.
§ 2.

SEC. 2068. Any weighmaster, or keeper of public scales, violating any of the provisions of the two preceding sections, upon complaint made before any justice of the peace having jurisdiction of the offense, may, upon conviction thereof, be fined in any sum not more than twenty dollars and not less than five dollars for each offense, and shall be liable to the person or persons injured, for the full amount of damages by them sustained.

OF THE INSPECTION OF SHINGLES AND LUMBER.

Inspector ap-
pointed.
R. § 1904.

SEC. 2069. The board of supervisors of each county, as often as may be necessary, shall appoint one inspector of lumber and

shingles, who shall have the power to appoint one or more deputies to act under him. For the conduct of the deputies, the principal shall be liable.

SEC. 2070. Before any inspector, or deputy inspector, shall enter upon the duties of his office, he shall take an oath or affirmation that he will faithfully and impartially execute the duties required of him by law; and each inspector shall, moreover, enter into a bond with sufficient security to be approved by the county auditor, in such sum as the board of supervisors may require, made payable to the state of Iowa, which bond shall be deposited with the treasurer of the county, conditioned for the faithful and impartial performance of his duties, as required by law.

SEC. 2071. Any person who may think himself aggrieved by the incapacity, neglect, or misconduct of such inspector or his deputy, may institute a suit on a copy of the bond certified by the treasurer in his own name. And in case the persons suing shall obtain judgment, he may have execution as in other cases; but the suit shall be commenced within one year after the cause of action accrues.

SEC. 2072. The inspectors or their deputies, within their respective counties, shall inspect all lumber, boards, and shingles, on application made to them for that purpose; and when inspected, stamp on the lumber, boards, and shingles, with branding irons made for that purpose, the name of the state and county where inspected, and the kind and quality of the articles inspected, which branding iron shall be made and lettered as directed by the board of supervisors. And every inspector shall make, in a book for that purpose, fair and distinct entries of articles inspected by him or his deputies, with the names of the persons for whom said articles were inspected.

SEC. 2073. If any person shall counterfeit the aforesaid brands or marks, or either of them, upon conviction thereof, he shall be deemed guilty of forgery, and shall be punished accordingly.

See § 3935.

SEC. 2074. A lawful shingle shall be sixteen inches in length, four inches wide, and half an inch thick at the butt end; and all lumber shall be divided into four qualities, and shall be designated clear, first common, second common, and refusal. Shingles shall be clear of sap, and designated as first and second quality. The shingles to be branded on each bundle with the quality and the name of the inspector.

CHAPTER 2.

MONEY OF ACCOUNT AND INTEREST.

SECTION 2075. The money of account of this state is the dollar, cent, mill, and all public accounts and the proceedings of all courts in relation to money, shall be kept and expressed in money of the above denomination.

[The word "counts" in the third line of the section, as it stands in the

Oath: bond of.
R. § 1907.

Suit on bond.
R. § 1908.

Duties of in-
spectors.
R. § 1909.

Penalty for
counterfeiting.
R. § 1911.

Size of shin-
gles: how
branded: divi-
sion of lumber.
R. § 1912.

printed code, is changed to "courts" in accordance with the list of "errata" in that volume.]

Same.
R. § 1786.
C. 51, § 944.

Interest: rate
of:
R. § 1787.
C. 51, § 945.

SEC. 2076. The above provisions shall not in any manner affect any demand expressed in money of another denomination, but such demand, in any suit or proceeding affecting the same, shall be reduced to the above denomination.

SEC. 2077. The rate of interest shall be six cents on the hundred by the year, on:

1. Money due by express contract;
2. Money after the same becomes due;
3. Money lent;
4. Money received to the use of another, and retained beyond a reasonable time without the owner's consent, express or implied;
5. Money due on the settlement of matured accounts from the day the balance is ascertained;
6. Money due upon open accounts after six months from the date of the last item;
7. Money due, or to become due, where there is a contract to pay interest, and no rate is stipulated. In all of the cases above contemplated parties may agree in writing for the payment of interest not exceeding ten cents on the hundred by the year.

[The word "rate" in the first line, as in the original, is "rule" in the printed code.]

A note providing for interest at ten per cent. per annum from date, draws interest at that rate *after* as well as *before* maturity: *Hand v. Armstrong*, 18-324; *Lucas v. Pickel*, 20-490.

Where the interest on a note is made payable annually, each installment of interest will draw interest at six per cent. from the time it is payable: *Mann v. Cross*, 9-327; *Preston v. Walker*, 26-205; *Burrows v. Stryker*, 47-477; but if the interest

is not made payable annually or at a specified time, it will not draw interest even from the time of the maturity of the principal: *Aspinwall v. Blake*, 25-319.

The parties may, by contract, stipulate that interest which is made payable annually, quarterly, or otherwise, shall bear interest at ten per cent. from the time it is due: *Ragan v. Day*, 46-239.

On judgments
and decrees.
R. § 1789.
C. 51, § 946.

SEC. 2078. Interest shall be allowed on all moneys due on judgments and decrees of any competent court or tribunal, at the rate of six cents on the hundred by the year, unless a different rate is fixed by the contract on which the judgment or decree is rendered; in which case the judgment or decree shall draw interest at the rate expressed in the contract, not exceeding ten cents on the hundred by the year, which rate must be expressed in the judgment or decree.

It is necessary that the rate of interest be "expressed in the contract" in order to authorize a judgment bearing a greater rate of interest than six per cent.; therefore, *held*, that, although, as it seems, coupons made in Iowa, but payable in New York, in which no rate of interest is

specified, would draw interest from maturity at seven per cent. (the rate in the latter state), yet a judgment in Iowa upon such coupons could only draw interest at the rate of six per cent.: *Rogers v. Lee Co.*, 1 Dillon (U. S. C. C.), 529.

Prohibition.
R. § 1790.

SEC. 2079. No person shall, directly or indirectly, receive in money, goods, or things in action, or in any other manner, any greater sum of value for the loan of money, or upon contract

sounded upon any bargain, sale, or loan of real or personal property than is in this chapter prescribed.

EXTENSION; RENEWAL; FORBEARANCE: The extension of time of a loan is a *loan* within the meaning of the usury laws, and a new note given by the surety to obtain an extension of time on the original undertaking would be usurious: *Kendig v. Linn*, 47-62.

A note given in payment of a balance due on a usurious note is itself usurious, for the debtor has the right to have all payments made on the original note in discharge of usurious interest applied upon the principal: *National Bank of Winterset v. Eyre*, 52-114, *Callanan v. Shaw*, 24-441, *Garth v. Cooper*, 12-364.

But if money be borrowed to pay off a usurious debt, the lender, even with notice, is not affected by the usury in the original debt: *Wendebone v. Parks*, 18-546.

An agreement, after the maturity of a note, to pay more than a legal rate of interest for forbearance, does not affect the note, but such contract itself is usurious, and anything paid thereon will be applied as general payment on the note: *Mallett v. Stone*, 17-64.

PLACE OF CONTRACTING: Where a contract is made in one state to be performed in another, the parties may stipulate that interest shall be calculated according to the laws of the place of performance: *Butters v. Olds*, 11-1. In such cases the parties may adopt the rules of either state as to interest; and where the note was executed in one state, to be performed in another, and the maker resided in still another state, and the property pledged as security was there situated; *held*, that the law of that state might be adopted as to interest, provided such provision was not resorted to merely as a means of evading the usury law: *Arnold v. Potter*, 22-194.

A note executed and dated in Missouri, but delivered, and the consideration therof received, in Iowa, *held*, an Iowa contract and subject to the Iowa law as to usury: *Hart v. Wills*, 52-56.

AGREEMENTS AS TO PENALTY FOR NON-PAYMENT OF MONEY WHEN DUE: An agreement to pay a sum of money by a day certain, and more than legal interest afterwards, by way of penalty, if the debt be not paid when due, is not usurious: *Wright v.*

Shuck, Mor., 425: *Shuck v. Wright*, 1 Gr., 128; *Gower v. Carter*, 3-244; *Wilson v. Dean*, 10-432; *Conrad v. Gibbons*, 29-120. But in such cases the court will not allow a recovery, either by way of penalty or liquidated damages, of more than a legal rate of interest for the failure to pay when due: *Gower v. Carter, supra*; *Vennum v. Gregory*, 21-326.

A provision in a note that, if not paid when due, the principal shall draw interest at ten per cent. from date, will not constitute usury unless it be shown that interest is included in the face of the note. But if interest is so included, the parties will not be allowed, by thus liquidating the damages for the mere non-payment of money, to evade the usury law: *Fisher v. Anderson*, 25-28.

DISCOUNT AND EXCHANGE: The charging of exchange in addition to legal interest in discounting foreign bills of exchange is not usury unless resorted to for the purpose of covering up a usurious transaction; but it is otherwise as to domestic bills: *Burrows v. Cook*, 17-436.

The sale of a note, not usurious, by the payee, at a greater rate of discount than legal interest, will not constitute usury: *Dickerman v. Day*, 31-444; and the same rule will hold as to an accommodation note, unless the purchaser has knowledge of the character of the paper: *Ibid.*

COMMISSIONS AND ATTORNEY'S FEES: The act of an agent for the loan of money in exacting a commission for himself, beyond the legal rate of interest, without authority or consent of his principal, will not render the loan usurious: *Gokee v. Knapp*, 44-32; *Brigham v. Myers*, 51-397. But a party making a loan to another, in person, cannot, under the name of commission, exact more than a legal rate of interest: *Pond v. Waterloo Agricultural Works*, 50-596.

A stipulation for reasonable attorney's fees, to be taxed up as part of the costs in case of suit, does not constitute usury: *Nelson v. Everett*, 29-184; *Weatherby v. Smith*, 30-131.

MONEY PAID AS USURIOUS INTEREST: Where there is no *contract* for an illegal rate of interest, the mere receiving of such interest will not render the contract itself usurious, but the receiving of the usurious in-

terest is unlawful and the amount so received will be presumed to be applied to the payment of the debt and legal interest thereon: *Sexton v. Murdock*, 36-516; and where the transaction embodies two or more notes, the whole amount of payments will be applied to the sum legally due on all of them and not to the payment of usurious interest, even when one of them, including usurious interest, appears as fully paid: *Smith v. Coopers*, 9-376.

Usurious interest voluntarily paid cannot be recovered back: *Nicholls v. Skeel*, 12-300; *Quinn v. Boynton*, 40-304.

In GENERAL: The provisions of this section apply, not only to contracts for loans but also to any contract of purchase or sale of property where an unlawful rate of interest is provided for: *Callanan v. Shaw*, 24-441. But a party may lawfully sell property on time for a larger sum than his cash price, with lawful interest thereon to the time of payment, would amount to; therefore held, that a sale of sheep for a sum to be paid at a future day, wherein it was agreed to pay, annually, two pounds of wool per sheep until time of payment (the value of the wool being greater than legal interest on the sum to be paid) was not usurious, in the absence of any showing that there was an intention to evade the usury law: *First, etc., Bank v. Owen*,

23-185; *Gilmore v. Ferguson*, 28-220.

The word "contract" as used in this section refers to the entire transaction in which usurious interest has been reserved. The substitution of one contract for another or the substitution of a new note for an old one will not purge the usury: *Smith v. Coopers*, 9-376; *Campbell v. McHarg*, 9-354.

An indorsement on a usurious note by the holder thereof of the usurious interest therein reserved will not purge such note of usury, unless the debtor concur therein so as to make virtually a new contract: *National Bank, etc., v. Eyre*, 32-114.

Where there is no evidence of an intent or agreement to contract for usurious interest, a jury would not be justified in finding usury: *Jones v. Berryhill*, 25-289.

A note executed to secure a loan of gold at a higher rate of premium than the market value of the gold, held, usurious: *Austin v. Walker*, 45-527.

The Code of 1851 repealed all usury laws in existence at that time, and until the passage of the act of 1853, which was substantially the same as the law now in force, there was no law in Iowa regulating the rate of interest: *Palmer v. Leffler*, 18-125.

As to rate of interest, charges, etc., allowable on loans in mutual building associations, see § 1186 and note.

SEC. 2080. If it shall be ascertained in any suit brought on any contract, that a rate of interest has been contracted for greater than is authorized by this chapter, either directly or indirectly, in money or property, the same shall work a forfeiture of ten cents on the hundred by the year upon the amount of such contract, to the school fund of the county in which the suit is brought, and the plaintiff shall have judgment for the principal sum without either interest or cost. The court in which said suit is prosecuted, shall render judgment for the amount of interest forfeited as aforesaid against the defendant, in favor of the state of Iowa for the use of the school fund of said county, whether the said suit is contested or not; and in no case where unlawful interest is contracted for, shall the plaintiff have judgment for more than the principal sum, whether the unlawful interest be incorporated with the principal or not.

WHO MAY SET UP THE DEFENSE OF USURY: The defense of usury is personal to the debtor, and cannot be interposed by one who is not a party nor privy to the usurious contract: *Drake v. Lowry*, 14-125; *Sternberg v. Callanan*, 14-251; *Miller v. Clark*, 37-325. It cannot, therefore, be interposed by the grantee of land mort-

gaged to secure the usurious debt, in an action to foreclose: *Green v. Turner*, 38-112; *Greither v. Alexander*, 15-470; *Hollingsworth v. Swickard*, 10-385; *Frost v. Shaw*, 10-491; *Perry v. Kearns*, 13-174; nor by a judgment creditor of an insolvent: *Carmichael v. Bodfish*, 32-418; nor can a junior mortgagee in an action to redeem

Usury: penalty
for taking.
R. & 179L

from the judgment in a foreclosure proceeding to which he was not made a party and in which usury was not pleaded, set up usury and compel the holder of the judgment to accept less than the amount of his lien: *Powell v. Hunt*, 11-430; and held, that such defense could not be set up by one who had converted a note and collected the full amount, when sued by the true owner for the amount so collected: *Allison v. King*, 25-56.

In an action to foreclose a mortgage upon the homestead, given by the husband and wife to secure a note of the husband, the plea of usury may be set up by the wife: *Lyon v. Welsh*, 20-578.

In an action on a co-partnership note, either partner, without the consent of the other, may set up usury, and so may a partner who has undertaken to pay the firm debts, in a suit brought against him alone, after dissolution: *Machinists' Bank v. Krum*, 15-49.

A surety may avail himself of the plea of usury: *Kendig v. Linn*, 47-62; but the surety may pay the usurious debt when it becomes due, and need not wait until suit is brought, so as to set up usury; and in an action by him to recover from the principal the amount so paid, the latter cannot plead the usury: *Culver v. Wilbern*, 48-26. However, a surety who has paid a portion of the original usurious debt, and given his own note for the balance, cannot, as against his own note, interpose the plea of usury: *Ibid.*

THE FORFEITURE ; NATURE OF ; COMPUTATION, ETC: It is not on the plea or for the benefit of the borrower that the court decrees a forfeiture; but whenever usury is brought to its knowledge: *Machinists' Bank v. Krum*, 15-49; and when usury is found, the penalty in favor of the school fund will be enforced, although the parties agree in asking a different judgment: *Burrows v. Cook*, 17-436.

But the state, representing the school fund, has no absolute or vested right to the forfeiture. Its right is qualified and incidental, and accrues only when an unpaid usurious contract is brought before the court for adjudication, and the usury is in a legitimate way brought to the knowledge of the court. Where suit was brought for a balance of usurious interest, the principal and legal interest having been paid, held erroneous to render judgment against defendant in favor

of the school fund for ten per cent. of the amount originally loaned: *Easley v. Board*, 18-132.

The judgment in favor of the school fund for the penalty, should be against the surety, as well as against the principal, and it seems that the surety, if compelled to pay, may have action against the principal for reimbursement of such penalty, or against his co-surety for contribution, and may be subrogated to the rights of the state with respect to the judgment and any security held by it: *McIntosh v. Likens*, 25-555.

In an action on a co-partnership debt, if usury is set up by either partner, the penalty should be enforced against both: *Machinists' Bank v. Krum*, 15-49.

The forfeiture is not a lien upon premises mortgaged to secure the usurious debt, but becomes a lien only from date of judgment therefor: *Lewis v. Barnaby*, 14-83.

In computing the forfeiture, the ten per cent. interest should be reckoned on the balance of the original sums loaned remaining unpaid, in the same manner as if the interest was going to the plaintiff; and not upon the entire sum originally loaned: *Smith v. Cooper*, 9-376. It should be computed up to the date of judgment and not simply to the maturity of the contract: *Ficklin v. Zwart*, 10-387; and from the time the money was borrowed, notwithstanding the fact that the form of the indebtedness has been changed to that of a note bearing a later date: *Drake v. Lowry*, 14-125.

While the courts of this state will not enforce the penal statutes of another state, yet where a contract made with reference to the laws of another state is usurious there, the forfeiture provided by such laws will be enforced: *Arnold v. Potter*, 22-194.

CONFESSON OF JUDGMENT: The defense of usury must be set up before judgment, and a judgment by confession cannot be attacked on the ground that usurious interest is included therein: *Troxel v. Clarke*, 9-201; *Trotogood v. Pence*, 22-543; *Miller v. Clark*, 37-325. But a confession of judgment entered into for the purpose of evading the usury laws, is void as between the parties, so far as the amount in excess of the sum the plaintiff may lawfully recover is concerned: *Mullen v. Russell*, 46-386; *Ohm v. Dickerman*, 50-671.

USURY AS AGAINST ASSIGNEE OF NOTE: Usury may be pleaded against

a *bona fide* holder for value of a negotiable instrument as well as against the payee: *Bacon v. Lee*, 4-490.

Where the holder of the note takes it upon representations of the maker that it is not usurious, the latter will be estopped from setting up the plea of usury against such holder: *French v. Rowe*, 15-563; *Callanan v. Shaw*, 24-441; but if the transaction is merely a device to evade the usury law, to which the assignee is privy, he will not be protected: *Nichols v. Lexins*, 15-362.

As to costs: Costs are not to be recovered by the party making the loan: *Binford v. Boardman*, 44-53.

Although there is no declaration that judgment shall be rendered against the plaintiff for costs, yet where defendant on the issue joined as to usury is successful, the costs may be taxed to plaintiff. It was not intended to leave each party to pay his own costs in such cases: *Garth v. Cooper*, 12-364.

On appeal in an action in which usury was pleaded, *held* that plaintiff might, in the supreme court, remit the usury and have judgment entered there for the principal, judgment being also there entered in favor of the school fund for the penalty, and the costs in the court below and on appeal being taxed to plaintiff:

SEC. 2081. Nothing in this chapter shall be so construed as to prevent the proper assignee, in good faith and without notice, of any usurious contract, recovering against the usurer the full amount of the consideration paid by him for such contract, less the amount of the principal money, but the same may be recovered of the usurer in the proper action before any court having competent jurisdiction.

An assignee cannot have recourse against his assignor in such cases until he has sustained loss by reason of the usurious character of the note: *Culver v. Wilbern*, 48-26.

Thompson v. Purnell, 10-205.

COMPETENCY OF PARTIES AS WITNESSES: As this section omits the provision of Rev., § 1791, as to the person contracting being a competent witness, such person will not be competent to testify if he falls within the provisions of § 3639: *Wormley v. Hamburg*, 40-22. "In such cases," the code commissioners say, "the party agreeing to pay the usurious interest should pay what he agreed to, rather than make an exception to the general rule:" *Code Com'rs' Rep.*

In GENERAL: Usury may be set up as a defense in an equitable action without first tendering the amount legally due. The maxim "He who seeks equity must do equity," is not applicable in such case: *Kuhner v. Butler*, 11-419; *Cox v. Douglas*, 12-185.

The borrower may have affirmative relief from the usurious contract. Neither his rights nor the duty of the court to enter up judgment in favor of the school fund should depend upon the form of the proceeding: *Morrison v. Miller*, 46-84.

The plaintiff in an action on a usurious note, should not be allowed to recover an attorney's fee provided therein: *Miller v. Gardner*, 49-234.

Assignee may recover of usurer.
R. § 1792.

Whether the usurer is, under this section, liable to any one but his immediate assignee, discussed, but not decided: *Brown v. Wilcox*, 15-414.

CHAPTER 3.

OF NOTES AND BILLS.

Negotiable.
R. § 1794.
C. '51, § 947.

SECTION 2082. Notes in writing, made and signed by any person, promising to pay to another person or his order or bearer, or to bearer only, any sum of money, are negotiable by endorsement or delivery in the same manner as inland bills of exchange, according to the custom of merchants.

A provision in a note making it negotiable and payable at a certain place, does not restrict its negotiability elsewhere, nor is demand at the

specified place necessary in order to charge the maker: *Scoharie, etc.*, *Bank v. Berard*, 51-257.

Where a note payable to payee or order is transferred without indorsement, the transferee, although he may bring action in his own name, (§ 2543) is not an indorsee but an assignee, and as such is subject to equities existing against his assignor

(§ 2546): *Younker v. Martin*, 18-143; and see note to § 2084.

The transferee of a negotiable note after maturity takes it subject to all equities arising out of the note itself, but not subject to an independent set-off. Sec. 2543 does not apply to such cases: *Richards v. Daily*, 34-427; *Stannus v. Stannus*, 30-448.

SEC. 2083. The person to whom such sum of money is made payable, may maintain an action against the maker, and any person to whom such note is so endorsed or delivered, may maintain his action in his own name against the maker or the endorser, or both of them.

Action.
R. 2 1795.
C. 51, 2 948.

SEC. 2084. Bonds, due bills, and all instruments in writing, by which the maker promises to pay to another, without words of negotiability, a sum of money, or by which he promises to pay a sum of money in property or labor, or to pay or deliver any property or labor, or acknowledges any money or labor or property to be due, are assignable by endorsement thereon or by other writing, and the assignee shall have a right of action in his own name, subject to any defense or counter claim which the maker or debtor had against any assignor thereof before notice of his assignment.

Assignment of
non-negotiable
instruments.
R. 2 1796.
C. 51, 2 949.

The indorsement of a non-negotiable note is equivalent to the making of a new note, and is a direct undertaking, and not a conditional one. Demand on the original maker, and notice thereof, are not necessary in order to charge such assignor, and the holder may write an absolute guaranty or a waiver of demand and notice over the blank indorsement of the assignor and hold him thereunder: *Wilson v. Ralph*, 3-450; *Long v. Snyser*, 3-266.

The assignee of negotiable paper stands in the same position as the assignee of a non-negotiable instrument, and is subject to the same defenses: *Franklin v. Twogood*, 18-515; but a transferee of negotiable paper, after maturity, is only subject to equities arising out of the note itself: See notes to § 2082.

If, after an assignment of which the debtor has no notice, another person obtains a second assignment, and first gives notice of his right, he will be preferred to the first assignee:

Merchants' etc., Bank v. Hewitt, 3-93. The provisions of this chapter do not limit the assignability of claims to those specifically mentioned: *Weire v. City of Davenport*, 11-49.

An instrument of guaranty is assignable: *First, etc., Bank of Dubuque v. Carpenter*, 41-518, 521; so is an attachment bond, *Moorman v. Collier*, 32-138; so is a judgment, and the assignee takes subject to all equities against the assignor: *Burtis v. Cook*, 16-194; *Ballinger v. Tarb-ll*, 16-491.

A policy of insurance, the assignment of which is expressly prohibited, is assignable, *after loss*, the same as any other debt: *Walters v. Washington Ins. Co.*, 1-404.

An assignment of a lease carries with it all the rights of the grantee, as well where the words "or assigns" are omitted after the grantee's name, as where they are inserted: *Frederick v. Callahan*, 40-311.

As to the action by assignee, see § 2546.

SEC. 2085. Instruments by which the maker promises to pay a sum of money in property or labor, or to pay or deliver property or labor, or acknowledges property or labor or money to be due to another, are negotiable instruments with all the incidents of negotiability, whenever it is manifest from their terms that such was the intent of the maker; but the use of the technical words "order" or "bearer" alone will not manifest such intent.

Are negotiable.
R. 2 1797.
C. 51, 2 950.

The use of the words "without defalcation," held sufficient to manifest the intent of the maker that the instrument should be negotiable:

Council Bluffs Iron Works v. Cupphey, 41-104.

A note payable "in currency" or "in current funds" is not, *prima facie*, a negotiable instrument, even though made payable at a banking house: *Rindskoff v. Barrett*, 11-172; *Huse v. Hamlin*, 29-501; but it may be shown by parol evidence that by those words the parties meant

"money," and that therefore the instrument is negotiable: *Haddock v. Woods*, 46-433.

The use of the words "or bearer" held not sufficient to make the instrument negotiable: *Peddicord v. Whittem*, 9-471; and so held also, in regard to the use of the words "or order" in a receipt for corn: *Merchants' &c., Bank v. Hewitt*, 3-93.

Assignment prohibited.
R. § 1798.
C. 51, § 961.

SEC. 2086. When by the terms of an instrument its assignment is prohibited, an assignment of it shall nevertheless be valid, but the maker may avail himself of any defense or counter claim against the assignees, which he may have against any assignor thereof before suit is commenced thereon.

The assignment of a policy of insurance, by the terms of which an assignment thereof is expressly pro-

hibited, would, under this section, be valid: *Mershon v. National Ins. Co.*, 34-87.

Open account assignable.
R. § 1799.
C. 51, § 962.

SEC. 2087. An open account of sums of money due on contract may be assigned, and the assignee will have the right of action in his own name, but subject to the same defenses and counter claims as the instruments mentioned in the preceding section.

The assignment of an open account as here contemplated must be *in writing*. An assignment by delivery or in parol will not be sufficient: *Audrews v. Brown*, 1-154; *Williams v. Soutter*, 7-435, 448.

In an action by the assignee of the account the defendant may set up any claim he may have against the assignor before suit is commenced: *Zugg v. Turner*, 8-223; *Reynolds v. Martin*, 51-324.

Assignor of:
how charged.
R. § 1803.
C. 51, § 966.

SEC. 2088. The assignor of any of the above instruments, not negotiable, shall be liable to the action of his assignee without notice.

This section does not limit the action of an assignee in such cases as his immediate assignor: *Huse v. Hamlin*, 29-501.

as well as an assignor, is liable without notice: *Henderson v. Booth*, 11-212.

Demand is not necessary to hold an assignor: See notes to § 2084.

Definition of.
R. § 1800.
C. 51, § 963.

SEC. 2089. The blank endorsement of an instrument for the payment of money, property, or labor by a person not a payer, endorsee, or assignee thereof, shall be deemed a guarantee of the performance of the contract.

This section and the one following do not apply to an express guaranty entered into otherwise than by the blank indorsement of a person not a party to the instrument: *Peddicord v. Whittem*, 9-471.

blank and made by an indorsee: *Greene v. Thompson*, 33-293.

An indorsement such as is here referred to imports a consideration and an accommodation indorser, although not bound in the absence of consideration, as between the immediate parties, cannot raise the defense of want of consideration as against a good faith purchaser for value, even when such party took with full knowledge of that fact: *Jones v. Berryhill*, 25-289.

An indorsement such as is here referred to imports a consideration and an accommodation indorser, although not bound in the absence of consideration, as between the immediate parties, cannot raise the defense of want of consideration as against a good faith purchaser for value, even when such party took with full knowledge of that fact: *Jones v. Berryhill*, 25-289.

GUARANTEE.

The contract of guaranty contemplated in this and the following sections is different from that of suretyship: *Robinson v. Reed*, 46-219.

This section and the following ap-

plied: *Mt. Pleasant, etc., Bank v. McLaran*, 26-306; *Rodabaugh v. Pitkin*, 46-544; *Picket v. Hawes*, 14-460.

Guarantor:
how charged.
R. § 1801.
C. § 51, § 951.

- SEC. 2090. To charge such guarantor, notice of non-payment by the principal must be given within a reasonable time; but the guarantor is chargeable without notice, if the holder show affirmatively that the guarantor has received no detriment from the want of notice.

Demand of the maker is not necessary to hold the guarantor: *Marvin v. Adamson*, 11-371; *Knight v. Dunsmore*, 12-35.

Proof of the maker's insolvency at maturity of the note and continuously afterwards, is *prima facie* sufficient to show that the guarantor has received no detriment from want of notice: *Knight v. Dunsmore*, 12-35.

This section only applies to a person deemed a guarantor as contem-

plated in the preceding section. A guarantor generally is liable without proof of demand and notice, or of diligence, but he may show by way of defense that he has been damaged by the want of such notice or the failure to use diligence in prosecuting the claim: *Sabin v. Harris*, 12-87.

The provisions of this section as to notice are not modified by § 2092: *Sibley v. Van Horn*, 13-209.

- SEC. 2091. A guarantor, as contemplated in the two preceding sections, is also liable to the action of an endorsee, assignee, or payee, if due diligence in the institution and prosecution of a suit against the maker or his representative has been used.

Due diligence, in the absence of peculiar facts, would require the assignee of the note to bring suit at the first regular term of court after maturity, and obtain judgment and execution thereon as soon as practica-

ble by the ordinary rules and practice of the court: *Vorhies v. Atlee*, 29-49.

The facts constituting due diligence must be averred: *Leas v. White*, 15-187.

Same.
R. § 1802.
C. § 51, § 955.

GRACE—PROTEST.

- SEC. 2092. Grace shall be allowed upon negotiable bills or notes payable within this state, according to the principles of the law merchant; and notice of non-acceptance or non-payment, or both, of said instruments shall be required according to the rules and principles of the commercial law.

This does not apply to note payable in property unless they are negotiable as provided in § 2085: *McCartney v. Adm'rs of Smalley*, 11-35.

[Sixteenth General Assembly, Chapter 81.]

- SEC. 1. All bills of exchange, drafts and orders payable within this state, except those drawn payable on demand, shall be entitled to grace.

A draft or bill in which no time for payment is mentioned, is payable on demand and therefore not affected by this statute, and is not entitled to grace: *First Nat'l Bank v. Price*, 52-570.

- SEC. 2093. A demand at any time during the days of grace, will be sufficient for the purpose of charging the endorser.

Demand.
R. § 1804.
C. § 51, § 957.

- SEC. 2094. The first day of the week, called Sunday; the first day of January; the thirtieth day of May; the fourth day of July; the twenty-fifth day of December; and any day appointed or

Holidays: protests made on preceding day.
9 G. A. ch. 116.

recommended by the governor of this state, or by the president of the United States, as a day of fasting or of thanksgiving, shall be regarded as holidays for all purposes relating to the presenting for payment or acceptance, and the protesting and giving notice of the dishonor of bills of exchange, bank checks, and promissory notes; and any bank or mercantile paper falling due on any of the days above named, shall be considered as falling due on the preceding day.

[As amended by 18th G. A., ch. 31, inserting "the thirtieth day of May."]

SEC. 2095. In case of a demand of payment of any promissory note, bill of exchange, or other commercial paper, by a notary public, and a refusal by the maker, drawer, or acceptor, as the case may be, the notary making said demand may inform the endorser or any party to be charged, if in the same town or township, by notice deposited in the nearest post-office to the parties to be charged on the day of demand, and no other notice shall be necessary to charge said party.

Aside from this statutory provision, a notice sent by mail to a party living in the same town is not good unless it appears that he actually received it: *Grimman v. Walker*, 9-426.

Where a notary after making demand, instead of notifying an indorser residing in the same place, either

personally or by notice deposited in the post office there, returned to a neighboring town and from there mailed a notice to the indorser, held, that the notice was not sufficient under this section: *Fuhnestock v. Smith*, 14-561.

Damages for non-acceptance or non-payment.
R. § 1812.
C. § 51, § 965.

SEC. 2096. The rate of damages to be allowed and paid upon the non-acceptance or non-payment of bills of exchange, drawn or endorsed in this state, when damage is recoverable, shall be as follows: If the bill be drawn upon a person at a place out of the United States, or in California, Oregon, Nevada, or any of the Territories, five per cent. upon the principal specified in the bill, with interest on the same from the time of the protest; if drawn upon a person at any other place in the United States other than in this state, three per cent. with interest.

This section relates to foreign and *etc. v. Owen*, 28-185. not inland bills: *First Nat. Bank*,

CONTRACTS.

Payable in property: demand.
R. § 1826.
C. § 51, § 959.

SEC. 2097. No contract for labor, or for the payment or delivery of property other than money, in which the time of performance is not fixed, can be converted into a money demand, until a demand of performance has been made and the maker refuses, or a reasonable time is allowed for performance.

If the time of payment is fixed, the property should be tendered, as provided in the next section, and no demand is necessary: *Barker v. Brink*, 4 Gr., 59.

Where an order is given by one person upon another for property, demand thereof must not only be made of the drawee, but also of the drawer, before suit can be brought thereon against the latter: *Whipple*

v. Abbott, 4 Gr., 66.

Where the time and place of delivery are fixed in the contract, if the debtor set apart the property at the time and place stipulated, although the creditor is not there to receive, or refuses to accept, the property tendered, the title passes to him, and the debt is discharged: *Games v. Manning*, 2 Gr., 251; *Hambel v. Tower*, 14-530.

SEC. 2098. When a contract for labor, or for the payment or delivery of property other than money, does not fix a place of payment, the maker may tender the labor or property at the place where the payee resided at the time of making the contract, or at the residence of the payee at the performance of the contract, or where the assignee of the contract resides when it becomes due.

Where defendant notified plaintiff of his readiness to deliver the property as provided in the contract, and plaintiff refused to receive it, *held* that by such refusal defendant was released from the necessity of any further tender: *Williams v. Triplett*, 3-518.

SEC. 2099. But if the property in such case be too ponderous to be conveniently transported, or if the payee had no known place of residence within the state at the making of the contract, or if the assignee of a written contract has no known place of residence within the state at the time of performance, the maker may tender the property at the place where he resided at the time of making the contract.

SEC. 2100. When the contract is contained in a written instrument which is assigned before due, and the maker has not ceded thereof, he shall make the tender at the residence of the holder if he resides in the state, and no farther from the maker than did the payee at the making thereof.

SEC. 2101. A tender of the property as above provided, discharges the maker from the contract, and the property becomes vested in the payee or his assignee, and he may maintain an action thereto as in other cases.

SEC. 2102. But if the property tendered be perishable, or require feeding or other care, and no person be found to receive it when tendered, the person making the tender shall preserve, feed, or otherwise take care of the same, and he has a lien on the property for his reasonable expenses and trouble in so doing.

SEC. 2103. When the holder of an instrument for the payment of money is absent from the state when it becomes due, and when the endorsee or assignee of such an instrument has not notified the maker of such endorsement or assignment, the maker may tender payment at the last residence or place of business of the payee before the instrument became due, and if there be no person authorized to receive payment and give the proper credit therefor, the maker may deposit the amount due with the clerk of the district court in the county where the payee resided at the time it became due, paying the clerk one per cent. on the amount deposited, and the maker shall be liable for no interest from that time.

CHAPTER 4.

OF TENDER.

SECTION 2104. When a tender of money or property is not accepted by the party to whom it is made, the party making it may, if he sees fit, retain in his own possession the money or property.

property tendered; but if afterwards the party to whom the tender was made see proper to accept it and give notice thereof to the other party, and the subject of tender be not delivered to him within a reasonable time, the tender shall be of no effect.

To keep a tender good after suit brought, the money must be paid into and remain in court. This section of the statute does not change the rule in that respect: *Johnson v. Triggs*, 4 Gr., 97; *Freeman v. Fleming*, 5-460; *Mohn v. Stoner*, 11-30; *S. C.*, 14-115; *Warrington v. Pollard*, 24-281; *Shugart v. Pattee*, 37-422; but this rule is of questionable propriety in view of the statute, even in a law action. In equitable proceedings, it will not be followed: *Hayward, v. Munger*, 14-516; and the party is to have a reasonable time, in view of all the circumstances of the case, within which to bring the money into court and keep his tender good: *Waide v. Joy*, 45-282.

Where a tender is pleaded, the party pleading it must show a con-

tinued readiness to pay, and that the money is brought into court to keep the tender good: *Long v. Howard*, 35-148.

A tender does not operate to discharge the debt: *Mohn v. Stoner*, 11-30; but if kept good stops interest and saves cost: *Johnson v. Triggs*, 4 Gr., 97.

A tender after suit brought, which does not include costs then accrued, is not sufficient: *Freeman v. Fleming*, 5-460; *Warrington v. Pollard*, 24-281; *Barnes v. Greene*, 30-114.

A tender admits plaintiff's cause of action to the amount of the tender, and plaintiff is entitled to judgment to that amount: *Johnson v. Triggs*, 4 Gr., 97; *Phelps v. Kathron*, 30-231; *Gray v. Graham*, 34-425.

**Offer in writing: effect of R. § 1816.
C. 51, § 967.**

SEC. 2105. An offer in writing to pay a particular sum of money, or to deliver a written instrument, or specific personal property, if not accepted, is equivalent to the actual tender of the money, instrument, or property, subject, however, to the condition contained in the preceding section; but if the party to whom the tender is made, desire an inspection of the instrument or property tendered, other than money, before making his determination, it shall be given him on request.

The offer here contemplated must be in writing; otherwise it does not dispense with the necessity of producing the money: *Cassady v. Bossler*, 11-242.

As the tender may be made in writing, a person knowing the residence and address of another may make him a tender although he is beyond the state: *Crawford v. Paine*, 19-172.

A party making a tender in writing, if sued, must, to keep his tender good, pay the money into court: *Shugart v. Pattee*, 37-422, and notes to preceding section.

Where defendant in a cross-petition offers to pay a sum of money, it amounts to a tender, and judgment should be rendered against him for that amount: *Corbin v. Woodbine*, 33-297, 301.

**Receipt.
R. § 1817.
C. 51, § 968.**

**Objection.
R. § 1818.
C. 51, § 969.**

SEC. 2106. The person making a tender may demand a receipt in writing, duly signed, for the money or article tendered, as a condition precedent to the delivery thereof.

SEC. 2107. The person to whom a tender is made, must, at the time, make any objection which he may have to the money, instrument, or property tendered, or he will be deemed to have waived it.

By "objection to the money" is meant objection to the kind of money, and the phrase has no reference to the amount. Want of objection as to the amount would not preclude recovery of the amount actually due: *C. & S. W. R. Co. v. Northwestern Union Packet Co.*, 38-377.

A tender of less than the amount

due will be sufficient as a tender unless objection be made to the amount, and will relieve the party from liability for interest and costs, but will not prevent a recovery by the other party for the actual amount due: *H'yncard v. Munger*, 14-516; *Guengrich v. Smith*, 36-587.

As to whether the provisions as to

tender apply in an action for unliquidated damages, *quære*: *Guengerich v. Smith, supra*.

A party making no objection to the amount of the tender cannot afterwards set up that the tender was in-

sufficient: *Sheriff v. Hull*, 37-174.

The party objecting to the terms of an instrument tendered, must specify what terms he requires: *Gilbert v. Mcsier*, 11-498.

CHAPTER 5.

OF SURETIES.

SECTION 2108. When any person bound as surety for another, for the payment of money or the performance of any other contract in writing, apprehends that his principal is about to become insolvent, or to remove permanently from the state without discharging the contract, if a right of action has accrued on the contract, he may, by writing, require the creditor to sue upon the same, or to permit the surety to commence suit in such creditor's name and at the surety's cost.

Notice by the surety to the creditor should be to bring suit upon the contract, that is, against principal and sureties, and a request that he bring suit against the principal alone, or his estate, is not sufficient: *Harriman v. Egbert*, 36-270.

The remedy given the surety is statutory and must be strictly followed. The creditor has the right of election to sue in his own name or permit the surety to do so. A notice requiring him to sue will not release

the surety if such notice is not complied with: *Hill v. Sherman*, 15-36; and a mere request for authority to sue, held not sufficient: *Davis S. M. Co. v. McGinnis*, 45-388, 545.

The notice by the surety must be in writing: *Sterens v. Campbell*, 6-538; *Davis v. Paine*, 45-194.

A joint maker, who is in fact a surety, may have the benefit of these provisions: *Piper v. Newcomer*, 25-221.

SEC. 2109. If the creditor refuse to bring suit, or neglect so to do for ten days after the request, and does not permit the surety so to do, and furnish him with a true copy of the contract or other writing therefor, and enable him to have the use of the original when requisite in such suit, the surety shall be discharged.

This election to sue or allow the surety to sue is a right of the creditor incident to the debt itself, and passes to an agent authorized to collect the debt. If not exercised by him on notice from the surety, it is lost and the surety discharged: *Thornburg v. Madren*, 33-380.

After making upon the principal the demand in writing, the surety has nothing further to do, and, if not notified by the principal within due time of his permission to sue, he is discharged: *First Nat'l Bank of Newton v. Smith*, 25-210.

SEC. 2110. When the surety commences such suit, he shall file his undertaking to pay such costs as may be adjudged against the creditor, and the suit shall be brought against all the obligors, but those joining in the request to the creditor shall make no defense to the action, but may be heard on the assessment of damages.

May require creditor to sue.
R. 2 1819.
C. 51, § 970.

Refusal of
R. 2 1820.
C. 51, § 971.

Surety may sue.
R. 2 1821.
C. 51, § 972.

No application to official bonds.
R. § 1822.
C. 51, § 973.

SEC. 2111. The provisions of this chapter extend to the executor or a deceased surety and holder of the contract, but they do not extend to the official bonds of public officers, executors, or guardians.

CHAPTER 6.

OF PRIVATE SEALS.

Abolished.
R. § 1823.
C. 51, § 974.

SECTION 2112. The use of private seals in written contracts, except the seals of corporations, is abolished; and the addition of a private seal to an instrument in writing, shall not affect its character in any respect.

Consideration implied.
R. § 1824.
C. 51, § 975.

SEC. 2113. All contracts in writing, signed by the party to be bound, or his authorized agent or attorney, shall import a consideration.

Such contracts import a consideration in the same manner that sealed instruments formerly did: *Jon-s v. Berryhill*, 25-289, 297; so held, as to a written guaranty: *Sabin v. Harris*, 12-87.

It is not ground of demurrer to a petition on a written instrument,

that no consideration is alleged or appears on the face thereof. Such objection must be set up as a defense: *Linder v. Lake*, 6-164; *Tousley v. Olds*, 6-526; *Goodpaster v. Porter*, 11-161; *Henderson v. Booth*, 11-212; *The State v. Wright*, 37-522.

Failure of.
R. § 1825.
C. 51, § 976.

SEC. 2114. The want or failure, in whole or in part, of the consideration of a written contract, may be shown as a defense total or partial, as the case may be, except to negotiable paper transferred in good faith and for a valuable consideration before maturity.

This section relates to the remedy, and does not impair the obligation of a contract when applied to an instrument made in another state where

the common law rule as to the conclusiveness of a seal upon the question of consideration is still in force: *Williams v. Haines*, 27-251.

CHAPTER 7.

OF ASSIGNMENTS FOR CREDITORS.

General only valid.
R. § 1826.
C. 51, § 977.

SECTION 2115. No general assignment of property by an insolvent, or in contemplation of insolvency, for the benefit of creditors shall be valid, unless it be made for the benefit of all his creditors in proportion to the amount of their respective claims.

This statute does not limit the right of an insolvent debtor, or one contemplating insolvency (in the absence of actual fraud) to sell or mortgage all of his property or make a partial assignment thereof for the benefit of one or more of his creditors, to the exclusion of others, and a general assignment afterwards made of his remaining property, will not be invali-

dated thereby: *Johnson v. McGrew*, 11-151; *Fromme v. Jones* 13-474; *Hutchinson v. Watkins*, 17-475; *Lampson v. Arnold*, 19-479; *Lyon v. McIlvane*, 24-9; *Daris v. Gireen*, 24-257; *Farwell v. Howard*, 26-381; nor will knowledge by the creditor thus preferred that other creditors were left unprovided for, render such a transaction void: *Cowles v. Ricketts*, 1-582.

Where an insolvent conveyed all his property not exempt from execution to his creditors by instruments executed at the same time and without their knowledge, held, that these instruments together constituted a general assignment, and not being made for the benefit of all creditors alike were void: *Burrows v. Lehn-dorf*, 8-96; so held, in case of mortgages and a general assignment executed at the same time: *Cole v. Dealham*, 13-551; *Van Patten v. Burr*, 52-518.

SEC. 2116. In the case of an assignment of property for the benefit of all the creditors of the assignor, the assent of the creditors shall be presumed.

The assent of creditors will not be presumed to a conditional assignment: *Williams v. Gartrell*, 4 Gr., 287.

SEC. 2117. The debtor shall annex to such assignment an inventory, under oath, of his estate, real and personal, according to the best of his knowledge, and also a list of his creditors and the amount of their respective demands; but such inventory shall not be conclusive to the amount of the debtor's estate; and such assignment shall vest in the assignee the title to any other property belonging to the debtor at the time of making the assignment. Every assignment shall be duly acknowledged in the same manner as conveyances of real estate and recorded in the county where the person making the same resides, or where the business in respect of which the same is made has been carried on.

A creditor or a co-debtor may be made assignee: *Wooster v. Stanfield*, 11-128.

SEC. 2118. The assignee shall also forthwith file with the clerk of the district or circuit court of the county where such assignment shall be recorded, a true and full inventory and valuation of said estate, under oath, so far as the same has come to his knowledge, and shall, then and there, enter into bonds to said clerk, for the use of the creditors, in double the amount of the inventory and valuation, with one or more sufficient sureties, to be approved by said clerk, for the faithful performance of said trust, and the assignee may thereupon proceed to perform any duty necessary to carry into effect the intention of said assignment.

Where the assignee filed a valuation signed and sworn to by other disinterested persons, held, that such inventory should not be treated as a

An assignment executed for the payment of debts "as fast as they become due," held, not to necessarily imply a payment otherwise than *pro rata* and therefore not void: *Meeker v. Sanders*, 6-61.

It seems that a provision in the assignment authorizing the assignee to sell for credit, will render it void, but authority to dispose of property upon such terms as in his judgment seem best, will not have that effect: *Berry v. Hayden*, 7-469; nor will a provision authorizing the assignee to compound with debtors: *Ibid.*

It has been held by our supreme court as sound in principle, and, in the absence of an authoritative adjudication by the U. S. supreme court, in accordance with the weight of authority, that the enactment of the federal bankruptcy law did not operate to nullify, supersede or suspend the insolvent laws of the states: *Reed v. Taylor*, 32-209.

Assent of creditors presumed.
R. 2 1827.
C. 51, 2 978.

Inventory to be annexed by debtor.
R. 2 1828.

Assignee to file inventory and appraisement.
R. 2 1830.

nullity: *Drain v. Mickel*, 8-498.

If an assignee take possession of property, it is evidence of an acceptance, and he may bring action in re-

lation to such property even before filing an inventory and bond. (See § 2128): *Price v. Parker*, 11-144.

SEC. 2119. The assignee shall forthwith give notice of such assignment by publication in some newspaper in the county, if any, and if none, then in the nearest county thereto, which publication shall be continued at least six weeks; and shall also forthwith send a notice by mail to each creditor of whom he shall be informed, directed to their usual place of residence, and notifying the creditors to present their claims, under oath, to him within three months thereafter.

To give notice. R. & 1829.

SEC. 2120. At the expiration of three months from the time of first publishing notice, the assignee shall report and file with the clerk of the court, a true and full list, under oath, of all such creditors of the assignor as shall have claimed to be such, with a statement of their claims, and also an affidavit of publication of notice, and a list of the creditors, with their places of residence, to whom notice has been sent by mail, and the date of mailing duly verified.

To report and file list of creditors. R. & 1831.

SEC. 2121. Any person interested may appear within three months after filing such report, and file with said clerk any exceptions to the claim or demand of any creditor; and the clerk shall forthwith cause notice thereof to be given to the creditor, which shall be served as in case of an original notice, returnable at the next term; and the said court shall at such term, proceed to hear the proofs and allegations of the parties in the premises, and shall render such judgment thereon as shall be just, and may allow a trial by jury thereon.

Objection to claims filed: proceedings. R. & 1832.

The provisions here made do not prevent a resort to equity by a person interested to compel a creditor holding security to exhaust such security before claiming dividends under the assignment: *Wurtz v. Hart*, 13-515.

SEC. 2122. If no exception be made to the claim of any creditor, or if the same have been adjudicated, the court shall order the assignee to make, from time to time, fair and equal dividends among the creditors of the assets in his hands, in proportion to their claims, and as soon as may be, to render a final account of said trust to said court, who may allow such commissions to said assignee in the final settlement as may be considered just and right.

Dividends ordered. R. & 1833.

SEC. 2123. The assignee shall at all times be subject to the order and supervision of the court or judge, and the said court or judge may, by citation and attachment, compel the assignee, from time to time, to file reports of his proceedings, and of the situation and condition of the trust, and to proceed in the faithful execution of the duties required by this chapter.

Assignee subject to order of court. C. & 1834, 1842.

SEC. 2124. No assignment shall be declared fraudulent or void, for want of any list or inventory as provided in this chapter. The court or judge may, upon application of the assignee or any creditor, compel the appearance in person of the debtor before such court or judge forthwith, or at the next term, to answer under oath such matters as may then and there be inquired of him, and such debtor may then and there be fully examined under oath as to the amount and situation of his estate, and the names of the

Not void: citation to debtor. R. & 1835.

creditors and amounts due to each, with their places of residence; and may compel the delivery to the assignee of any property or estate embraced in the assignment.

Assignment not void for want of inventory: *Wooster v. Stanfield*, 11-

SEC. 2125. The assignee shall, from time to time, file with the clerk of the court, an inventory and valuation of any additional property which may come into his hands under said assignment after the filing of the first inventory, and the clerk may thereupon require him to give additional security.

SEC. 2126. Any creditor may claim debts to become due as well as debts due, but on debts not due a reasonable abatement shall be made when the same are not drawing interest, and all creditors who shall not exhibit their claim within the term of three months from the publication of notice as aforesaid, shall not participate in the dividends until after the payment in full of all claims presented within said term and allowed by the court.

Claims entitled to share in the first dividends are only those filed within three months from the first publication of notice: *In the matter of the assignment of Holt*, 45-301.

SEC. 2127. Any assignee as aforesaid, shall have as full power and authority to dispose of all estate, real and personal, assigned, as the debtor had at the time of the assignment, and to sue for and recover in the name of such assignee everything belonging or appertaining to said estate, and generally do whatsoever the debtor might have done in the premises; but no sale of real estate belonging to said trust shall be made without notice, published as in case of sales of real estate on execution, unless the court shall order and direct otherwise.

SEC. 2128. In case any assignee shall die before the closing of his trust, or in case any assignee shall fail or neglect for the period of twenty days after the making of any assignment, to file an inventory and valuation, and give bonds as required by this chapter, the district or circuit court, or any judge thereof, of the county where such assignment may be recorded, on the application of any person interested, shall appoint some person to execute the trust embraced in such assignment; and such person, on giving bond with sureties as required above of the assignee, shall possess all the powers conferred upon such assignee, and shall be subject to all the duties hereby imposed, as fully as though named in the assignment; and in case any security shall be discovered to be insufficient, or, on complaint before the court or judge, it should be made appear that any assignee is guilty of wasting or misapplying the trust estate, said court or judge may direct and require additional security, and may remove such assignee and may appoint others instead; and such person so appointed, on giving bond, shall have full power to execute such duties and to demand and sue for all estate in the hands of the person removed, and to demand and recover the amount and value of all moneys and property and estate so wasted and misappropriated which he may neglect or refuse to make satisfaction for, from such person and his sureties.

Where the inventory is merely imperfect or defective, the court does not possess the power to appoint another assignee. The statute only contem-

Additional inventory.
R. § 1836.

Claims not due.
R. § 1837.

Death or failure of assignee:
court may appoint another.
R. § 1838.

Additional security.

plates cases where there is such fail- | cept: *Drain v. Mickel*, 8-438.
ure as to amount to a refusal to ac-

[Sixteenth General Assembly, Chapter 14.]

Taxes entitled to priority. SEC. 1. Hereafter in all assignments of property for the benefit of creditors, whether under chapter seven, or title fourteen, of the code, or at common law, assessments or taxes levied under the laws of the state, including municipal corporations, shall be entitled to priority or preference and be first paid in full.

CHAPTER 8.

OF MECHANICS' LIENS.

[Sec's 2129 to 2146, (amended by 15th G. A., chs. 44 and 49) are repealed by the following act]:

[Sixteenth General Assembly, Chapter 100.]

Repealing clause. SECTION 1. Chapter eight, cf title fourteen, of the code, titled "Of Mechanics' Liens," is hereby repealed; provided, that this repeal shall not effect [affect] any contract already made, executed, or executory, or impair any right whatever, arising under the law hereby repealed.

Liens arising prior to the taking | *Brodt v. Rohkar*, 48-36; *Conrad v.*
effect of this act must be enforced | *Starr*, 50-470.
under the law as it then stood:

Collateral security: prevents a lien. SEC. 2. No person shall be entitled to a mechanic's lien, who, at the time of executing or making the contract for furnishing material or performing labor, as hereinafter provided, or during the progress of the work, erection, building or other improvement, shall take any collateral security on such contract. But after the completion of such work, and when the contractor or other person shall have become entitled to claim, or have a lien, the taking collateral or other security shall not affect the right to such mechanic's lien, unless such new security shall be by express agreement given and received in lieu of the mechanic's lien.

Collateral security may be a separate obligation guaranteeing the performance of the contract, or a transfer of property or other contracts to insure such performance; but the contract, promise, or property must have been intended and accepted as collateral security: *Mervin v. Sherman*, 9-331.

Taking a mortgage on the same property upon which the lien is claimed will not defeat the right to a

lien: *Gilcrest v. Gottschalk*, 39-311; nor will the taking of a promissory note in the absence of an express agreement to the contrary have that effect: *Ibid.*; *Greene v. Eli*, 2 Gr., 508; *Miz v. Eli*, 2 Gr., 513; *Logan v. Atix*, 7-77; but if the note be actually negotiated the lien will be lost: *Scott v. Ward*, 4 Gr., 112. The mere attempt, however, to negotiate such note will not discharge or waive the lien: *Halley v. Ward*, 4 Gr., 36.

Who may have a lien. SEC. 3. Every mechanic, or other person, who shall do any labor upon, or furnish any materials, machinery, or fixtures for, any building, erection or other improvement upon land, including

those engaged in the construction or repair of any work of internal improvement, by virtue of any contract with the owner, his agent, trustee, contractor, or sub-contractor, upon complying with the provisions of this chapter, shall have for his labor done, or materials, machinery or fixtures furnished, a lien upon such building, erection or improvement, and upon the land belonging to such owner on which the same is situated, to secure the payment of such labor done, or materials, machinery, or fixtures furnished.

To entitle a party to a lien for material, he must show that they were furnished upon a contract, especially for the purpose of being used for or about a building; but the particular building for which they were furnished, or the lot upon which they were to be used need not be mentioned or understood: *Cotes v. Shorey*, 8-416.

The contract need not be express, or in writing: *Ibid.*; *Neilson v. Iowa Eastern R. Co.*, 51-184; *S. C.*, *id.*, 14.

Prob. evidence is admissible to show the purpose for which the material was furnished, even when the contract is in writing: *Neilson v. Iowa Eastern R. Co.*, *supra*.

While the work must be performed or the material furnished under a contract, it is not necessary that every item should be contemplated and specifically named: *Jones v. Swan*, 21-181; *Stockwell v. Carpenter*, 27-119. Nor need it be expressly understood that the mechanic is to have a lien: *Jones v. Swan*, *supra*.

Where the title to land is in the wife, a mechanic cannot have a lien thereon for material furnished the husband, without the acquiescence of the wife, to erect a building upon such land; and it will not be presumed from the marital relation alone that the husband is authorized to act in the matter as the agent of the wife: *Miller v. Hollingsworth*, 33-224; *S. C.* 36-163; *Price v. Seydel*, 46-696; *Nelson v. Corer*, 47-250; but if the wife's acquiescence is shown, an equitable lien may be established: *Miller v. Hollingsworth*, 36-163. However, if the material is furnished for the use and benefit of the wife and at the request of the husband acting as her agent, a lien may be had upon the property of the wife: *Kidd v. Wilson*, 23-464; *Burdick v.*

Moon, 24-418.

A co-tenant can create a lien against the common property only to the extent of his right and interest therein: *Conrad v. Starr*, 50-470.

The lien attaches to the building and not to the material furnished; a purchaser of such material, even with knowledge that it is not paid for, takes free from any lien: *Heaton v. Horr*, 42-187.

A party furnishing material for a building, or improvement under contract has a lien for all the material furnished whether used or not: *Neilson v. Iowa Eastern R. Co.*, *supra*.

The rolling stock of a railway is not a part of the realty, and a party furnishing ties for the construction of the road does not acquire any lien upon such rolling stock: *Ibid.*

A laborer employed for days' wages in the construction of a railroad is entitled to a lien on the road for such wages: *Mornan v. Carroll*, 35-22; and a sub-contractor under a sub-contractor is also entitled to a lien: *Mears v. Stubbs*, 45-675.

The provisions of the statute are only intended to apply to property which may be sold on execution, and a mechanics' lien cannot be enforced against such public property as is exempt under § 3048: *Loring v. Small*, 50-271; *Lewis v. Chickasaw Co.*, 50-234; *Charnock v. Dist. Tp.*, 51-70.

The fact that a mechanic agrees to take his pay in property will not defeat his right to a lien: *Reiley v. Ward*, 4 Gr. 21.

A mechanic's lien is an insurable interest: *Carter v. Humboldt F. Ins. Co.*, 12-287.

As to a lien for repairs, enlargements, etc., see notes under § 9 of this act.

As to who is an "owner" within the meaning of this section, see § 10 of this act and notes.

SEC. 4. The entire land upon which any such building, erection, or other improvement is situated, including that portion of the same not covered therewith, shall be subject to all liens created by this chapter, to the extent of all the right, title and interest owned therein by the owner thereof, for whose immediate Extent of
lien.
C. '73, § 2140.
R. l. 364.

use or benefit such labor was done or things furnished, and when the interest owned in said land by such owner of such building, erection or other improvement is only a lease hold interest, the forfeiture of such lease for the non-payment of rent, or for non-compliance with any of the other stipulations therein, shall not forfeit or impair such liens so far as concerns such buildings, erections and improvements, but the same may be sold to satisfy said lien, and be moved within thirty days after the sale thereof by the purchaser.

Extent of lien on work of internal improvement.

SEC. 5. And when such material shall have been furnished or labor performed, in the construction, repair, or equipment of any railroad, canal, viaduct, or other similar improvement, the lien therefor shall extend and attach to the erection, excavations, embankments, bridges, road-bed, and all land upon which the same may be situated, including the rolling stock thereto appertaining and belonging; all of which, except the easement or right of way, shall constitute the building, erection or improvement provided and mentioned in this statute.

Contractor or sub-contractor to make and file statement.
C. '73, § 2137.
R. § 1851.
9 G. A. ch. 11.

Time of filing.

Failure to file shall not defeat the lien.
Except.

SEC. 6. Every person, whether contractor or sub-contractor, who wishes to avail himself of the provisions of this statute, shall file with the clerk of the district court of the county in which the building, erection or other improvement to be charged with the lien is situated, a just and true statement or account of the demand due him after allowing all credits, setting forth the time when such material was furnished or labor performed, and when completed, and containing a correct description of the property to be charged with the lien, and verified by affidavit. Such verified statement or account must be filed by a principal contractor, within ninety days, and by a sub-contractor within thirty days from the date on which the last of the material shall have been furnished, or the last of the labor was performed. But a failure or omission to file the same within the periods last aforesaid, shall not defeat the lien, except against purchasers or encumbrancers in good faith without notice, whose rights accrued after the thirty or ninety days, as the case may be, and before any claim for the lien was filed: *provided*, that where a lien is claimed upon a railway, the sub-contractor shall have sixty days from the last day of the month in which such labor was done or material furnished, within which to file his claim therefor.

[Decisions under Code § 2137, which was similar to this, except that it did not apply to sub-contractors, they being provided for under § 2131.]

An encumbrancer acquiring a lien upon the property within the ninety days here specified takes subject to the mechanic's lien, though no statement thereof has been previously filed; until the expiration of the ninety days no record notice of a mechanic's lien is necessary: *Evens v. Tripp*, 35-371; *Lamb v. Harneman*, 40-41; but a lien filed after the expiration of ninety days cannot be enforced against a purchaser without notice even though he has made no actual payment, but only executed

his note for the purchase price: *Weston v. Dunlap*, 50-183.

A failure to file the statement does not defeat the lien as against the owner: *Kidd v. Wilson*, 23-464; nor does the statement itself limit the right of recovery as against him: *Neilson v. Iowa Eastern R. Co.*, 51-184.

A mistake in the description of the property in the account filed is not irremediable, and a lien may still be claimed by filing a new account containing a correct description. The foreclosure of a lien misdescribing the property will not so merge the account but that it may furnish the basis for a claim for a lien upon the

property for which the material was furnished: *Gray v. Dunham*, 50-170.

Whether a statement filed subsequently to the assignment of the claim, but in the name of the assignor, would be sufficient, *quere*: *Ford v. Ind. Dist. of Stuart*, 46-294.

Whether filing in the office of the clerk of the circuit court will be sufficient, *quere*: *Price v. Seydel*, 46-696, 698.

Under Code § 2131, as amended by 15th G. A., ch. 49, § 1, providing that a laborer under a sub-contractor, desiring to secure a lien, should notify

the owner and contractor before or at the time of performing the labor, etc., and after settlement with the sub-contractor should give such settlement, signed by the sub-contractor, to the owner and contractor, and file a copy thereof with the clerk, etc., *held*, that a failure to give a copy of the settlement to the owner and contractor would not defeat the laborer's lien, the filing of the claim for a lien, which includes a copy of the statement, being sufficient notice to them: *Bundy v. K. & D. M. R. Co.*, 49-207.

SEC. 7. To preserve his lien as against the owner and to prevent payments by the latter to the principal contractor or to intermediate sub-contractors, but for no other purpose, the sub-contractor must, within the thirty days as provided in section six of the filing of said claim, which notices may be served by any sheriff or constable, or other person; and if the party to be served, his agent or trustee, is out of the county wherein the property is situated a return of that fact by the officers shall constitute sufficient service from and after it is filed with the clerk. But the lien of the sub-contractor may at any time be vacated and discharged by the owner, contractor, or intermediate sub-contractor, filed [filing] with the clerk of the said district court a bond in twice the amount of the sum for which the mechanic's lien is claimed and filed with two or more sureties to be approved by the clerk, conditioned for the payment of any sum for which the mechanic may obtain judgment upon the demand of which such statement or account has been filed. But if no claim for a lien is filed within the periods hereinbefore provided and the notice thereof is not served, or if such thing being done and the bond as above provided is filed, then the owner or contractor may thereafter proceed, make payments and adjust their claims, without regard to the lien of the sub-contractor, and nothing in this act contained shall be construed to require the owner to pay a greater amount or in any other manner, or at earlier dates than those provided in his contract. But the liens created by this act are for the full enforcement thereof for the use and benefit of the holders of said liens.

If the owner is not served with "written notice of the filing of said claim," he is not affected thereby, whatever notice he may have otherwise: *Lounsbury v. I. M. & N. P. R. Co.*, 49-255.

The sub-contractor is chargeable with notice of the contract between

the owner and the principal contractor, and is bound by any payments made, even within the thirty days given him by the preceding section to file his lien, if such payments are made according to the terms of the contract: *Stewart v. Wright*, 52-335.

SEC. 8. A sub-contractor may at any time after the expiration of said thirty days, file his claim for a mechanic's lien, with the clerk of the district court, as hereinbefore provided, and give written notice thereof to the owner, his agent or trustee, as provided in section seven, and from and after the service of such notice his lien shall have the same force and effect, and be prosecuted or va-

Sub-contractor
must give no-
tice of filing
claim.

C. '73, § 2131.

15 G. A. ch. 49.

13 G. A. ch. 140.

§ 1.

Service.

Lien dis-
charged by
filing bond.

Extent of lien
if claim is filed
after expira-
tion of thirty
days.

C. '73, § 2133.

15 G. A. ch. 49.

13 G. A. ch. 140.

§ 1.

cated by bond, as if filed within the thirty days; but shall be enforced against the property or upon the bond, if given by the owner only to the extent of the balance due from the owner to the contractor at the time of the service of such notice upon the owner, his agent or trustee. But if in such case the bond is given by the contractor or person contracting with the sub-contractor filing the claim for a lien, such bond shall be enforced to the full extent of the amount found due the sub-contractor.

[Decisions under similar provisions prior to this act.]

The object of this section is to protect the owner from the payment of any sum greater than that contemplated in his contract. The lien of the sub-contractor can be enforced against any sum due from the owner at the time of service of the notice

here provided, or thereafter becoming due under his contract: *Culter v. McCormick*, 48-406.

The notice here contemplated should be in writing: *Jeure v. Perkins*, 29-262.

As to the provisions of Code, § 2134 (not preserved in this act), see *Mears v. Stubbs*, 45-675.

SEC. 9. The mechanic's lien provided for by this statute shall take priority as follows:

First. As between persons claiming mechanic's liens upon the same property, according to the order of the filing of the statements and accounts therefor.

Priority.
C. '73, 2139-41.
R. § 1853-5.
C. '51, § 981.

Over garnishments.

Over all other liens and incumbrances.

Encumbrance[s].
Purchasers in good faith.

Lien upon building.

Building sold separately.

Second. They shall take priority to all garnishments upon the person of the owner for the contract debt, made prior or subsequent to the commencement of the furnishing of the material or performance of the labor, without regard to the date of filing the claim for mechanic's lien.

Third. They shall be preferred to all other liens and incumbrances which may be attached to or upon such building, erection or other improvements, or either of them, and to the land upon which they are situated, made subsequent to the commencement of said building, erection or other improvement. *Provided*, that the rights of purchasers, encumbrance[s] and other persons, who acquire interests in good faith for valuable consideration, and without notice after the expiration of the time for filing claims for liens as provided in section six, shall be prior and paramount to the claims of all contractors or sub-contractors, who have not, at the date such rights and interests were acquired, filed their claims for mechanics' liens.

Fourth. The liens for the things aforesaid or the work, including those for additions, repairs and betterments, shall attach to the buildings, erections or improvements for which they were furnished or done, in preference to any prior lien or encumbrance or mortgage upon the land upon which such erection, building, or improvement belongs, or is erected or put. If such material was furnished or labor performed in the erection or construction of an original and independent building, erection, or other improvement commenced since the attaching or execution of such prior lien, encumbrance, or mortgage, the court may in its discretion order and direct such building, erection, or improvement to be separately sold under execution, and the purchaser may remove the same within such reasonable time as the court may fix. But if in the discretion of the court such building should not be separately sold, the court shall take an account and ascertain the separate values of the land, and the erection, building, or other im-

provement, and distribute the proceeds of sale so as to secure to the prior mortgage or other lien, priority upon the land, and to the mechanic's lien, priority upon the building, erection, or other improvement. If the material furnished or labor performed was for addition to, repairs of, or betterments upon buildings, ^{In case of lien for repairs.} erections or other improvements, the court shall take an account of the values before such material was furnished or labor performed, and the enhanced value caused by such additions, repairs, or betterments, and, upon the sale of the premises, distribute the proceeds of sale so as to secure to the prior mortgage or lien priority upon the land and improvements as they existed prior to the attaching of the mechanic's lien, and to the mechanic's lien priority upon the enhanced value caused by such additions, repairs or betterments. In case the premises do not sell for more than sufficient to pay off the prior mortgage or other lien, the proceeds shall be applied on the prior mortgage or other liens.

[Decisions under Code, § 2139, which was as follows:

"The liens for labor done, or things furnished, shall have priority in the order of the filing of the accounts thereof as aforesaid, and shall be preferred to all other liens and encumbrances which may be attached to or upon such building, erection, or other improvement, and to the land on which the same is situated, or either of them, made subsequent to the commencement of said building, erection, or other improvement."]

The mechanic's lien attaches at the commencement of his work, and the time for notice expires ninety days from the conclusion thereof: *Jones v. Sican*, 21-181; *Del. R. Const. Co. v. D. & St. P. R. Co.*, 46-406, 413.

A mechanic's lien has priority over a mortgage which was executed subsequently to the commencement of any building, erection or other improvement though the particular work for which the lien is claimed was subsequent to such mortgage: *Monroe v. West*, 12-119; *Neilson v. Iowa Eastern R. Co.*, 44-71; *French v. B. C. R. & M. R. Co.*, 4 Dillon (U. S. C. C.) 570.

Where prior liens exist upon the real estate upon which the improvement is erected, the only mode of enforcing the priority of the mechanic's lien against the improvement is by the sale and removal thereof as here provided. Where the nature of the improvement is such that it cannot be removed the lien of the mechanic must be postponed to that of prior incumbrances upon the land: *Conrad v. Starr*, 50-470.

The commencement of a building is the first work done upon the ground, which is made the founda-

tion thereof, and is to form part of the work suitable and necessary for its construct on: *Ibid.*

[Decisions under Code, § 2141, which was as follow :

"The lien for the things aforesaid, or work, shall attach to the buildings, erections, or improvements for which they were furnished or done, in preference to any prior lien, or encumbrance, or mortgage upon the land upon which the same is erected or put, and any person enforcing such lien, may have such building, erection, or other improvement sold under execution, and the purchaser may remove the same within a reasonable time thereafter."]

The word "improvements" as here used, refers to an independent erection upon the land, and not to an addition to or betterment of a building. A lien for such addition or betterment is subject to a prior mortgage on such building: *Getchell v. Allen*, 34-559; *O'Brien v. Pettis*, 42-293.

A party furnishing material, etc., for the repair and enlargement of a building, gets a lien subject to any liens already existing thereon, even though but little of the original building remains: *Equitable Life Ins. Co. v. Slye*, 45-615; and where a person furnishes machinery which is to be permanently attached, he acquires a right to a lien upon the building, but not upon the machinery itself: *Ibid.*

A mechanic's lien for repairs, such as new piers and abutments in a railroad bridge, which become integral parts of the road, does not attach to such repairs as prior to a mortgage previously given on the whole road: *Bear v. B. C. R. & M. R. Co.*

48-619; *French v. same*, 4 Dillon (U. S. C. C.), 570.

A vendor's lien for purchase money takes priority as to the land, but as to a building erected is inferior to the mechanic's lien: *Stockwell v. Carpenter*, 27-119.

This section has not sole reference to the case of buildings and improvements made by tenants as specified in the preceding section: *Ibid.*

Where, in a suit to foreclose a mortgage, certain parties were made defendants who had mechanic's liens upon buildings erected subsequently to the giving of the mortgage and where the rights of all the parties ac-

crued under the Rev. by which the rights of the holder of a mechanic's lien were to be determined by an action at law, held, that it was erroneous to decree a sale of the land and buildings together and the payment of a certain portion of the proceeds to the holders of the mechanic's liens; that they had no claim upon any portion of the proceeds of the land, but only the right to have the buildings sold and removed. It seems that the same would be true under the Code, although the proceedings to enforce a mechanic's lien are now to be brought in equity: *Brodt v. Rohkar*, 48-36.

SEC. 10. Every person for whose immediate use or benefit any building, erection, or other improvement is made, having the capacity to contract, including guardians of minors, or other persons, shall be included in the word "owner" thereof.

Definition of
"owner."
C. '73, § 2144.
R. § 186.
C. '51, § 982.

A party in possession under contract of purchase, or a bond for a deed, is an "owner" as here contemplated:

SEC. 11. All persons furnishing things or doing work provided for by this act shall be considered sub-contractors, except such as have theretofore contracts directly with the owner, proprietor, his agent or trustee.

Definition of
"sub-con-
tractor."
C. '73, § 2146.
R. § 1871.

A laborer employed by a sub-contractor when the latter has been paid in full by the contractor, cannot enforce a lien against the owner, although such owner be still indebted to the contractor. The rights of the parties in such cases are the same as though the sub-contractor had contracted directly with the owner: *Utter v. Crane*, 37-631.

SEC. 12. Any person having filed a claim for a lien by virtue of this chapter, may at once bring suit to enforce the same, or upon any bond given in lieu thereof, in the district or circuit court of the county wherein the property is situated.

Lien: how
enforced.
C. '73, § 2142.
R. § 1856.
15 G. A. ch. 44.

SEC. 13. Upon the written demand of the owner, his agent or contractor, served on the person claiming the lien requiring him to commence suit to enforce such lien, such suit shall be commenced in thirty days thereafter, or the lien shall be forfeited. The mechanic's liens are assignable, and shall follow the assignment of the debt; and where such lien is for personal services, the same shall be exempt from execution, as now provided for such services.

Suit shall be
begun on de-
mand, or lien
forfeited.

Assignable.
15 G. A. ch. 44.

Before the passage of 15th G. A., ch. 44, which contained the last sentence of this section, the assign- ment of the debt alone would not operate to transfer the lien: *First Nat'l Bank v. Day*, 52-680.

SEC. 14. The clerk of the district court shall endorse upon every account or statement the date of its filing, and make the abstract thereof in a book by him to be kept for that purpose, and properly indexed, containing the date of its filing, the name of the person filing the lien, the amount of the lien, the name of the person against whom the lien is filed, and a description of the property to be charged with the same.

Duty of clerk.
C. '73, § 2138.
R. § 1852.

SEC. 15. Whenever a lien has been claimed by filing the same in the clerk's office, and is afterwards paid, the creditor shall acknowledge satisfaction thereof upon the proper book in such office, or otherwise, in writing: and if he neglect to do so for ten days after the demand, he shall forfeit and pay twenty-five dollars to the owner or contractor and be liable to any person injured, to the extent of his injury.

Acknowledgment of satisfaction: penalty for failure
C. 73, § 2145.
R. § 1867-c.

LIENS UPON PROPERTY OF POLITICAL CORPORATIONS.

[Fifteenth General Assembly, Chapter 23.]

SEC. 1. Where a corporation has issued bonds in payment of an indebtedness exceeding five per centum on the value of the taxable property of such corporation for labor upon, and materials furnished in the erection and furnishing a building and making improvements for such corporation, the holders of said bonds or any of them, including the said assignees thereof, shall have a lien upon such building and furniture and fixtures therein, and upon the land of such corporation on which such building and improvements are situated to the amount of such indebtedness.

SEC. 2. Any person having a lien by virtue of this act may enforce the same by equitable proceedings in any district or circuit court of the county where the property is situated, at any time before the maturity of said bonds, as though the action was for the labor done and materials furnished and used in and about the erection of said building. All persons owning such bonds shall be made parties plaintiffs or defendants, and if the names of such owners are unknown they shall be made parties defendant as provided by section twenty-six hundred and twenty-two of the code. The plaintiff shall set forth and the court shall ascertain and determine the entire amount of the indebtedness on such bonds and order that the property be sold to pay such indebtedness, and the proceeds of the sale shall be paid to the court to be by it distributed pro rata among the holders of such indebtedness; but no money judgment shall be rendered against such corporation, and the clerk shall not pay the proceeds of such sale to the holders of such indebtedness until they deliver him their bonds which shall be by him canceled.

Enforcement of lien.
All bondholders to be made parties.
No money judgment.

This act is unconstitutional as making the corporations referred to liable in an amount exceeding the limit of

indebtedness fixed by Const., art. 11, § 3: <i>Mosher v. Ind. Sch. Dist. of Ackley</i> , 44-122.	
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CHAPTER 9.

OF LIMITED PARTNERSHIP.

SECTION 2147. Limited partnerships for the transaction of any lawful business within the state, may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities herein described.

Authorized.
R. § 1874.
9 G. A. ch. 128.

General and special partners.
R. § 1875.

Power of general partners.
R. § 1876.

Certificate signed: what it must contain.
R. § 1877.

Certificate acknowledged.
R. § 1878.

To be filed and recorded.
R. § 1879.

Affidavit attached.
R. § 1880.

Effect of false statement.
R. § 1881.

Publication of terms of partnership.
R. § 1882.

Affidavits of filed.
R. § 1883.

Renewals acknowledged and recorded.
R. § 1884.

SEC. 2148. Such partnerships may consist of one or more persons who shall be called general partners, and who shall be responsible as general partners; and of one or more persons who shall contribute in actual cash a specific sum as capital who shall be called special partners, and shall not be liable for the debts of the partnership beyond the funds so contributed.

SEC. 2149. The general partners only shall be authorized to transact business and sign for the partnership, and bind the same.

SEC. 2150. The persons desirous of forming such partnership, shall make and severally sign a certificate, which shall contain:

1. The name or firm under which such partnership is to be conducted;

2. The general nature of the business intended to be transacted;

3. The names of all general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence;

4. The amount of capital which each special partner shall have contributed to the common stock;

5. The period at which the partnership is to commence, and the period at which it will terminate.

SEC. 2151. The certificate shall be acknowledged by the several persons signing the same, before some one authorized to administer oaths and take acknowledgment of deeds.

SEC. 2152. The certificate so acknowledged shall be filed in the office of the clerk of the district court of the county in which the principal place of business of the partnership is situated, and shall be recorded by him in a book to be kept for that purpose. If the partnership shall have places of business situated in different counties, a transcript of the certificate, and of the acknowledgment thereof duly certified by the clerk in whose office it shall be filed, shall be filed and recorded in like manner in the office of the clerk of the district court of every such county.

SEC. 2153. At the time of filing the original certificate, an affidavit of one or more of the general partners shall be attached thereto, stating that the sums specified in the certificate to have been contributed by each of the special partners, had been actually and in good faith paid in cash.

SEC. 2154. If any false statement be made in such certificate or affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof as general partners.

SEC. 2155. When the certificate and affidavit is filed, there shall be published forthwith, for six weeks, in two newspapers published in the senatorial district in which the business is carried on, to be designated by the clerk of the district court of the county where the certificate and affidavit is filed; and if such publication is not made, the partnership shall be deemed general.

[This section is as reported by the Code Commissioners and adopted by the Legislature, although there is an evident omission of some words necessary to complete the sense.]

SEC. 2156. Affidavits of the publication of such notice by the printers of the newspapers in which the same shall be published, may be filed with the clerk of the district court directing the same, and shall be evidence of the facts therein contained.

SEC. 2157. Every renewal of such partnership beyond the time originally fixed, shall be certified, acknowledged, and recorded, and an affidavit of a general partner be made and filed,

and notice be given in the manner herein required for its original formation, and every such partnership which shall be otherwise renewed or continued, shall be deemed a general partnership.

SEC. 2158. Every alteration which shall be made in the names of the partners, in the nature of the business, or in the capital or shares, or in any other matter specified in the certificate, shall be deemed a dissolution of the partnership, and every such partnership which shall in any manner be carried on after any such alteration has been made, shall be deemed a general partnership according to the provisions of the last section.

SEC. 2159. The business of the partnership shall be conducted under a firm, in which the names of the general partners only shall be inserted, without the addition of the word "company" or any other general term, and if the name of any special partner shall be used in such firm, with his privity, he shall be deemed a general partner.

SEC. 2160. Suits in relation to the business of the partnership, may be brought and conducted by and against the general partners in the same manner as if there were no special partners.

SEC. 2161. No part of the sum which any special partner shall have contributed to the capital stock shall be withdrawn by him, or paid or transferred to him in the shape of dividends, profits, or otherwise, at any time during the continuance of the partnership; but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of such capital, and if, after the payment of such interest, any profits shall remain to be divided, he may also receive his portion of such profits.

SEC. 2162. If it shall appear that, by the payment of interests or profits to any special partner, the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his share of capital, with interest.

SEC. 2163. A special partner may, from time to time, examine into the state and progress of the partnership concerns, and may advise as to their management, but he shall not transact any business on account of the partnership, nor be employed for that purpose as agent, attorney, or otherwise. If he shall interfere, contrary to these provisions, he shall be deemed a general partner.

SEC. 2164. The general partners shall be liable to account to each other, and to the special partners.

SEC. 2165. Every partner who shall be guilty of any fraud in the affairs of the partnership, shall be liable, civilly, to the party injured to the extent of his damage, and shall also be liable to an indictment for a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court by which he shall be tried.

SEC. 2166. Every sale, assignment, or transfer of any of the property or effects of such partnership, made by such partnership when insolvent or in contemplation of insolvency, or after, or in contemplation of the insolvency of any partner, with the intent of giving a preference to any creditor of such partnership or insolvent partner, over other creditors of such partnership, and every judgment confessed, lien created, or security given by

Alterations:
effect of
R. § 1888.

Firm name.
R. § 1886.

Suits against.
R. § 1887.

Capital con-
tributed by
special partner
not withdrawn.
R. § 1888.

Capital of, re-
stored.
R. § 1889.

Special partner
may examine
and advise as
to business.
R. § 1890.

Accounting.
R. § 1891.

Penalty for
fraud.
R. § 1892.

Cannot assign
or prefer credi-
tors.
R. § 1893.

such partnership, under the like circumstances, and with the like intent, shall be void, as against the creditors of such partnership.

Same.
R. § 1894.

SEC. 2167. Every such sale, assignment, or transfer of any of the property or effects of a general or special partner, made by such general or special partner, when insolvent or in contemplation of insolvency, or after, or in contemplation of the insolvency of the partnership, with the intent of giving to any creditor of his own, or of the partnership, a preference over creditors of the partnership, and every judgment confessed, lien created, or security given by any such partner under the like circumstances and with the like intent shall be void, as against the creditors of the partnership.

Liability of
special partners.
R. § 1895.

SEC. 2168. Every special partner who shall violate any provisions of the two last preceding sections, or who shall concur in or assent to any such violation by the partnership, or by any individual partner, shall be liable as a general partner.

Claims of spe-
cial partners
postponed.
R. § 1896.

SEC. 2169. In case of the insolvency or bankruptcy of the partnership, no special partner shall, under any circumstances, be allowed to claim as a creditor, until the claims of all the other creditors of the partnership shall be satisfied.

Dissolution:
terms of.
R. § 1897.

SEC. 2170. No dissolution of such partnership by the acts of the parties, shall take place previous to the time specified in the certificate of its formation, or in the certificate of its renewal, until a notice of such dissolution shall have been filed and recorded in the office of the clerk of the district court in which the original certificate was recorded, and published once in each week for four weeks, in a newspaper printed in each of the counties where the partnership may have places of business.

CHAPTER 10.

OF WAREHOUSEMEN AND CARRIERS.

SECTION 2171. All warehouse receipts, certificates, or other evidences of the deposit of property, issued by any warehouseman, wharfinger, or other person engaged in storing property for others, shall be, in the hands of the holder thereof, presumptive evidence of title to said property both in law and equity.

Who receipts:
effect of.
10 G. A. ch. 120.

SEC. 2172. No warehouseman, wharfinger, or other person shall issue any receipt or other voucher for any personal property to any person unless such property is in store and under his control at the time of issuing the receipt or other voucher.

Not issued
unless prop-
erty is in store.
9 G. A. ch. 84,
§ 1.

SEC. 2173. Such property shall remain in store until otherwise ordered by the holder of the receipt or voucher, subject only to the condition thereof, and the contract between the parties as to the time of its remaining in store.

Subject to order
of holder.
Same, § 2.

SEC. 2174. No such person shall issue any second receipt or second receipt voucher for any such property while any former receipt or voucher

for the same property, or any part thereof, is outstanding and uncanceled.

SEC. 2173. No such person shall sell or encumber, ship, transfer, or in any manner remove beyond his immediate control, any personal property for which a receipt or voucher has been given as aforesaid without the written consent of the person holding the same, except to enforce his lien thereon for storage and warehouse charges, as provided for in this chapter.

SEC. 2176. Every person aggrieved by the violation of any of the four sections next preceding, may have and maintain an action at law against the person violating any of the provisions of said sections, before any court of competent jurisdiction, and shall not only recover actual damages, but shall be entitled to exemplary damages which he may have sustained by reason of any such violation, whether such person shall have been convicted under a criminal charge for the same act or not.

UNCLAIMED PROPERTY—SALE

SEC. 2177. Personal property transported by, or stored or left with any warehouseman, forwarding and commission merchant, or other depository, express company, or carriers, shall be subject to a lien for the just and lawful charges on the same, and for the transportation, advances, and storage thereof.

This section does not give a livery of *Donald v. Bennett*, 45-456 [But now stable keeper a lien for his charges see 18th G. A., ch. 25, inserted following § 2184.]

SEC. 2178. If any such property shall for six months remain in the possession, unclaimed, of any of the persons named in the preceding section, with the just and legal charges unpaid thereon, the person having the same in charge or possession shall first give notice to the owner or consignee, if his whereabouts is known, and if not known, shall go before the nearest justice of the peace and make affidavit, stating the time and place where such property was received, the marks or brands by which the same is designated, if any, and, if not, then such other description as may best answer the purpose of indicating what the property is, and shall also state the probable value of the same, and to whom consigned; also the charges paid thereon, accompanied by the original receipt for such charges and by the bill of lading, also the other charges, if any, due and unpaid, and whether the whereabouts of the owner or consignee of such goods is known to the affiant, and if so, whether notice was first given to him as hereinbefore provided; which affidavit shall be filed by the said justice of the peace in his office, for the inspection of any one interested in the same, and he shall also enter in his estray book a statement of the contents of the affidavit, and time and place where and by whom the same was made.

SEC. 2179. If such property still remain unclaimed, and the charges are not paid thereon, then the person in possession of the same, either by himself or his agent, where the probable value does not exceed one hundred dollars, shall advertise the same for sale for the period of fourteen days, by posting five notices in five

of the most public places in the city or locality where said property is held, giving such description as will indicate what is to be sold; but when the goods exceed the probable value of one hundred dollars, then the length of notice shall be four weeks, and, in addition to the five notices posted, there shall be a publication of the notice of sale for the same length of time in some newspaper of general circulation in the locality where the property is held, if there be one, and if not, then in the next nearest newspaper published in that neighborhood, at the end of which period, if the property is still unclaimed, or charges unpaid, the agent or party in charge shall sell the same at public auction, between the hours of ten o'clock A. M. and four o'clock P. M., for the highest price the same will bring in cash, which sale may be continued from day to day by public announcement to that effect at the time of adjournment until all the property is sold, and from the proceeds of such sale, the said party who held the same shall take and appropriate a sufficient sum to pay all charges thereon, and all costs and expenses of sale; the cost of advertising to be no more than in the case of a constable or sheriff's sale, and the same to be conducted in a similar manner.

Perishable property defined: and when and how sold.
Same, § 4.

SEC. 2180. Fruit, fresh fish, oysters, game, and other perishable property, shall be retained twenty-four hours, and if not claimed within that time and charges paid, after the proper affidavit is made as required by section twenty-one hundred and seventy-eight of this chapter, may be sold either at public or private sale, in the discretion of the party holding the property, for the highest price that the same will bring, and the proceeds of the sale disposed of as above provided. But in both cases, if the owner or consignee of said unclaimed property shall reside in the same city, town or locality in which the same shall be, and shall be known to the agent or party having the same in charge, then personal notice shall be given to said owner or consignee, in writing, that said goods are held subject to his order, on payment of charges, and that unless he pays said charges, and removes the property, the same will be sold as provided by law.

DISPOSITION OF PROCEEDS.

Surplus over-charges to be deposited in county treasury.
Same, § 5.

SEC. 2181. After the charges due and unpaid on the property, and the expenses and costs of sale have been taken out of the proceeds, the excess in the hands of the agent or person who was in charge thereof, shall be by him forthwith deposited with the county treasurer of the county where the goods were sold, subject to the order of the owner, said ownership being properly authenticated under oath, and such person shall take from such treasurer a receipt for such money, and deposit the same with the county auditor. He shall also file with the county treasurer a schedule of the property, with the name of the consignee or owner, if known, of each piece of property sold, the sum realized from the sale of each separate package, describing the same, together with a copy of the advertisement as hereinbefore provided, and a full statement of the receipts of the sale, and the amount disbursed to pay charges, costs, and expenses of sale,

all of which shall be under the oath of the party or his agent, which schedule, statement, oath, and advertisement shall all be filed and preserved in the treasurer's office, for the inspection of any one interested in the same.

SEC. 2182. Should the owner of the property sold not make a demand upon the county treasurer for any money that may be in the treasury to his credit, according to the provisions of this chapter, the sum so unclaimed shall be accounted for by the county treasurer, and placed to the credit of the county in the next subsequent settlement made by the treasurer with the county; and should the money, or any part thereof, remain unclaimed during the period of one year, it shall then be paid into the school fund, to be distributed as other funds may be by law, which may be raised by tax on other property of the county. But nothing herein contained shall be a bar to any legal claimant from prosecuting and proving his claim for such money at any time within ten years, and, the claim being within that period prosecuted and proved, it shall be paid out of the county treasury in which it was originally placed without interest.

Duty of treasurer.
Same, § 6.

COMMON CARRIERS—LIABILITY.

SEC. 2183. The proprietors of all omnibuses, transfer companies, or other common carriers, doing business within the limits of this state, and their agents, shall be liable for damages occasioned to baggage or other property belonging to travelers, through careless or negligent handling while in possession of said companies or carriers. And in addition to the damages recoverable therefor, the parties recovering the same shall also be entitled to an allowance of not less than five dollars for every day's detention caused thereby or by a suit brought to recover the same.

For damages
caused to baggage.
13 G. A. ch. 163.

This section gives a remedy for damages to baggage, and for detention of the traveler caused thereby. It does not authorize a recovery on account of detention of baggage or failure to deliver the

same, nor for detention of the traveler unless it be on account of damages done to baggage: *Anderson v. T. W. & W. R. Co.*, 32-86.

SEC. 2184. No contract, receipt, rule, or regulation shall exempt any corporation or person engaged in transporting persons for hire from the liability of a common carrier, or carrier of passengers, which would exist had no contract, receipt, rule, or regulation been made and entered into.

Cannot limit
liability.
11 G. A. ch. 113.

Sec. 1308 is almost identical with this section.

LIENS OF LIVERY STABLE KEEPERS AND HERDERS.

[Eighteenth General Assembly, Chapter 25.]

SEC. 1. Keepers of livery and feed stables, herdsmen, and feeders, and keepers of stock for hire, shall have a lien on all stock and property coming into their hands as such, for their proper charges, and for the expense of keeping, when the same have been received from the owner, or from any person, provided, however, this lien shall be subject to all prior liens of record.

For expenses.

SEC. 2. The owner or claimant of the property may release the lien, and shall be entitled to the possession of the property on

Release of lien.

tendering to the person claiming the lien a good and sufficient bond, signed by two sureties, residents of the county, who shall justify, the penalty in the bond being at least three times the amount of the lien claimed, and conditioned to pay any judgment the person claiming the lien shall obtain, for which the property was liable under the lien.

HOTEL AND INN KEEPERS.

[Eighteenth General Assembly, Chapter 181.]

Liability for money and valuables when a safe is provided. SEC. 1. All keepers of hotels, inns and eating houses who shall keep therein a good and sufficient vault or iron safe for the deposit of moneys, jewels and other valuables, and also provide a safe and commodious place therein for the baggage, clothing and other property belonging to their guests and patrons, and shall keep posted up in a conspicuous place in the office or other public room, and in the guests' apartments therein, printed notices stating that such places for safe deposit are so provided for the use and accommodation of the inmates thereof, shall not be held liable for the loss of any moneys, jewels, valuables, baggage or other property not deposited with them for safe keeping, unless such loss shall occur through the fault or negligence of such landlord, keeper, or their agents, servants or employes; *provided*, that nothing herein contained sha'l apply to such reasonable amount of money, nor to such jewels, baggage, valuables or other property as is usual, fit and proper for any such guest to have and retain in their apartments or about their persons.

Notices. SEC. 1. All keepers of hotels, inns and eating houses who shall keep therein a good and sufficient vault or iron safe for the deposit of moneys, jewels and other valuables, and also provide a safe and commodious place therein for the baggage, clothing and other property belonging to their guests and patrons, and shall keep posted up in a conspicuous place in the office or other public room, and in the guests' apartments therein, printed notices stating that such places for safe deposit are so provided for the use and accommodation of the inmates thereof, shall not be held liable for the loss of any moneys, jewels, valuables, baggage or other property not deposited with them for safe keeping, unless such loss shall occur through the fault or negligence of such landlord, keeper, or their agents, servants or employes; *provided*, that nothing herein contained sha'l apply to such reasonable amount of money, nor to such jewels, baggage, valuables or other property as is usual, fit and proper for any such guest to have and retain in their apartments or about their persons.

Proviso. SEC. 1. All keepers of hotels, inns and eating houses who shall keep therein a good and sufficient vault or iron safe for the deposit of moneys, jewels and other valuables, and also provide a safe and commodious place therein for the baggage, clothing and other property belonging to their guests and patrons, and shall keep posted up in a conspicuous place in the office or other public room, and in the guests' apartments therein, printed notices stating that such places for safe deposit are so provided for the use and accommodation of the inmates thereof, shall not be held liable for the loss of any moneys, jewels, valuables, baggage or other property not deposited with them for safe keeping, unless such loss shall occur through the fault or negligence of such landlord, keeper, or their agents, servants or employes; *provided*, that nothing herein contained sha'l apply to such reasonable amount of money, nor to such jewels, baggage, valuables or other property as is usual, fit and proper for any such guest to have and retain in their apartments or about their persons.

Lien. SEC. 2. All hotel, inn, or eating-house keepers shall have a lien upon, and may take and retain possession of all baggage and other property belonging to or under the control of their guests, which may be in such hotel, inn, or eating-house, for the value of their accommodations and keep, and for all money paid for or advanced to, and for such extras and other things as shall be furnished such guest, and such property so retained shall not be exempt from attachment or execution to the amount of the proper and reasonable charges of such hotel, inn, or eating-house keeper against such guest, and the costs of enforcing the lien thereon.

TITLE XV.

OF THE DOMESTIC RELATIONS.

CHAPTER 1.

OF MARRIAGE.

SECTION 2185. Marriage is a civil contract, requiring the consent of parties capable of entering into other contracts, except as herein otherwise declared. A contract. R. § 2515. C. 51, § 1463.

SEC. 2186. A marriage between a male person of sixteen and a female of fourteen years of age is valid, but if either party has not attained the age thus fixed, the marriage is a nullity or not at the option of such party made known at any time before he or she is six months older than the age thus fixed. Between what ages valid. R. § 2516. C. 51, § 1464.

SEC. 2187. Previous to any marriage within this state, a license for that purpose must be obtained from the clerk of the circuit court of the county wherein the marriage is to be solemnized, agreeable to the provisions of this chapter. License. R. § 2517. C. 51, § 1465.

SEC. 2188. Such license must not in any case be granted where either party is under the age necessary to render the marriage absolutely valid, nor shall it be granted where either party is a minor without the previous consent of the parent or guardian of such minor, nor where the condition of either party is such as to disqualify him for making any other civil contract. Same. R. § 2518. C. 51, § 1466.

SEC. 2189. Unless such clerk is acquainted with the age and condition of the parties for the marriage of whom the license is applied for, he must take the testimony of competent and disinterested witnesses on the subject. Proof of age required. R. § 2519. C. 51, § 1467.

SEC. 2190. He must cause due entry of the application for the issuing of the license to be made in a book to be procured and kept for that purpose, stating that he was acquainted with the parties and knew them to be of competent age and condition, or that the requisite proof of such fact was made to him by one or more witnesses, stating their names, which book shall constitute a part of the records of his office. Clerk to make entry of record. R. § 2520. C. 51, § 1468.

SEC. 2191. If either party is a minor, the consent of the parent or guardian must be filed in the clerk's office after being acknowledged by the said parent or guardian, or proved to be genuine, and a memorandum of such facts must also be entered in said book. Consent of parent or guardian required. R. § 2521. C. 51, § 1469.

SEC. 2192. If the clerk of the circuit court grants a license contrary to the provisions of the preceding sections, he is guilty of a misdemeanor, and if a marriage is solemnized without such license Penalty. R. § 2522. C. 51, § 1470.

being procured, the parties so married, and all persons aiding in such marriage, are likewise guilty of a misdemeanor.

Punishment for the misdemeanor here described is provided in § 3967 and a justice of the peace has not jurisdiction to try such offense (§ 4660) *White v. The State*, 4-449. The solemnizing of a marriage without a license being first procured, subjects the parties to punishment for a misdemeanor, but not to the fine of fifty dollars, provided in § 2195: *Ibid.*

Who may solemnize.
R. § 2524.
C. 51, § 1472.

Certificate of.
R. § 2525.
C. 51, § 1473.

Penalty.
R. § 2526.
C. 51, § 1474.

Return: penalty for not making.
R. § 2527.
C. 51, § 1475.

Register of marriages.
R. § 2528.
C. 51, § 1476.

When not applicable.
R. § 2529.
C. 51, § 1477.
12 G. A. ch. 191.

Husband responsible for return.
R. § 2530.
C. 51, § 1478.

Illegitimate.
R. § 2531.
C. 51, § 1479.

When void.

SEC. 2193. Marriages must be solemnized either:

1. By a justice of the peace or mayor of the city wherein the marriage takes place;
2. By some judge of the supreme, district, or circuit court of this state;
3. By some officiating minister of the gospel, ordained or licensed according to the usages of his denomination.

SEC. 2194. After the marriage has been solemnized, the officiating minister or magistrate shall, on request, give each of the parties a certificate thereof.

SEC. 2195. Marriages solemnized with the consent of parties in any other manner than is herein prescribed, are valid; but the parties themselves, and all other persons aiding or abetting, shall forfeit to the school fund the sum of fifty dollars each.

A mutual agreement between the parties *in presenti* to be husband and wife, followed by co-habitation constitutes a valid marriage: *Blanchard v. Lambert*, 43-228. Solemnizing a marriage without license does not subject the parties to the forfeiture here provided: See note to § 2192.

SEC. 2196. The person solemnizing marriage shall forfeit a like amount, unless within ninety days after the ceremony he make return thereof to the clerk of the circuit court.

SEC. 2197. The clerk of the circuit court shall keep a register containing the names of the parties, the date of the marriage, and the name of the person by whom the marriage was solemnized, which, or a certified transcript therefrom, is receivable in all courts and places as evidence of the marriage and the date thereof.

The marriage register is sufficient evidence to establish the marriage without other proof that the person officiating was authorized to solemnize marriages: *Verholf v. Van Houwenlengen*, 21-429. The record may be introduced to establish the marriage of parties charged with incest under § 4039: *The State v. Schaunhurst*, 34-547.

SEC. 2198. The provisions of this chapter, so far as they relate to procuring licenses and to the solemnizing of marriages, are not applicable to members of any particular denomination having, as such, any peculiar mode of entering the marriage relation.

SEC. 2199. But where any mode is thus pursued which dispenses with the services of a clergyman or magistrate, the husband is responsible for the return directed to be made to the clerk, and is liable to the above named penalty if the return is not made.

SEC. 2200. Illegitimate children become legitimate by the subsequent marriage of their parents.

SEC. 2201. Marriages between persons whose marriage is prohibited by law, or who have a husband or wife living, are void;

but if the parties live and cohabit together after the death of the former husband or wife, such marriage shall be deemed valid.

Such marriages as here contemplated confer no rights upon either party as to the property of the other: *Carpenter v. Smith*, 24-200.

Where a woman, after marriage with a man having a wife living, again

married, *held*, that the first marriage was absolutely void and the second valid, and that in such cases no proceedings to have the first marriage declared void by law are necessary: *Drummond v. Irish*, 52-41.

CHAPTER 2.

OF HUSBAND AND WIFE.

SECTION 2202. A married woman may own in her own right, real and personal property acquired by descent, gift, or purchase, and manage, sell, convey, and devise the same by will, to the same extent and in the same manner that the husband can property belonging to him.

The husband is, as matter of law, the head of the family, and a wife having a husband who is not under disability, cannot hold property exempt from execution under § 3072: *Van Doran v. Marden*, 48-186.

Where the husband and wife take property jointly, they take as tenants

in common: *Hoffman v. Stigers*, 28-302.

The increase of the personal property of the wife belongs to her, and is not subject to her husband's debts, although he expends labor and care in the keeping thereof: *Russell v. Long*, 52-250.

SEC. 2203. When property is owned by either the husband or wife, the other has no interest therein which can be the subject of contract between them, or such interest as will make the same liable for the contracts or liabilities of either the husband or wife who is not the owner of the property, except as provided in this chapter.

Held, that in so far as this section renders property of the wife which under Rev. §§ 2499-2502 would have been liable to execution on a judgment against the husband, ex-

empt therefrom, it does not apply to contracts made before the taking effect of the Code: *Schmidt v. Holtz*, 44-446.

SEC. 2204. Should either the husband or wife obtain possession or control of property belonging to the other, either before or after marriage, the owner of the property may maintain an action therefor, or for any right growing out of the same, in the same manner and extent as if they were unmarried.

This section does not give to the husband or wife the right to an ac-

tion against the other for tort: *Peters v. Peters*, 42-182.

SEC. 2205. For all civil injuries committed by a married woman, damages may be recovered from her alone, and her husband shall not be responsible therefor, except in cases where he would be jointly responsible with her if the marriage did not exist.

Conveyances
to each other
valid.

SEC. 2206. A conveyance, transfer, or lien executed by either husband or wife to or in favor of the other, shall be valid to the same extent as between other persons.

Before the enactment of this provision, *held* that a conveyance by a wife to her husband under an agreement of separation, relinquishing her right of dower in his real estate and releasing all claim for support and maintenance, would be upheld in the absence of fraud, and when supported

by a consideration: *Robertson v. Robertson*, 25-350; but that, aside from an agreement to separate, neither one had any interest in the other's lands which might be the subject of barter and sale between them: *McKee v. Reynolds*, 26-578.

Abandonment
of either:
property may
be sold to pay
debts.

SEC. 2207. In case the husband or wife abandons the other and leaves the state, and is absent therefrom for one year without providing for the maintenance and support of his or her family, or is confined in jail or the penitentiary for the period of one year or upward, the district or circuit court of the county where the husband or wife so abandoned or not confined resides, may, on application by petition setting forth fully the facts, authorize him or her to manage, control, sell, and encumber the property of the husband or wife for the support and maintenance of the family, and for the purpose of paying debts. Notice of such proceedings shall be given as in ordinary actions, and anything done under or by virtue of the order or decree of the court, shall be valid to the same extent as the same was done by the party owning the property.

Contracts and
sales binding
on both.

SEC. 2208. All contracts, sales or encumbrances made by either the husband or wife by virtue of the power contemplated in the preceding section, shall be binding on both, and, during such absence or confinement, the person acting under such power may sue and be sued thereon, and for all acts done the property of both shall be liable and execution may be levied or attachment issued accordingly. No suit or proceedings shall abate or be in anywise affected by the return or release of the person confined, but he or she may be permitted to prosecute or defend jointly with the other.

Decree set
aside.

SEC. 2209. The husband or wife affected by the proceedings contemplated in the two preceding sections, may have the order or decree of the court set aside or annulled by filing a petition therefor, and serving a notice on the person in whose favor the same was granted as in ordinary actions. But the setting aside of such decree or order shall in nowise affect any act done thereunder.

Either may
make the other
attorney in
fact.

SEC. 2210. A husband or wife may constitute the other his or her attorney in fact, to control and dispose of his or her property for their mutual benefit, and may revoke the same to the same extent and manner as other persons.

Wages of wife;
actions by.
11 G. A. ch. 24.

SEC. 2211. A wife may receive the wages of her personal labor and maintain an action therefor in her own name, and hold the same in her own right; and she may prosecute and defend all actions at law or in equity for the preservation and protection of her rights and property, as if unmarried.

A claim for malicious prosecution of the wife is her property, and in an action therefor the husband cannot be joined: *Musse'man v. Galligher*, 32-383; and the same is true of a claim for libel: *Pancost v. Burnell*, 32-394. But the husband is entitled to the labor and assistance of the

wife, and he has a right of action for any injury to her which deprives him thereof: *Meichister v. Hatten*, 42-288; and the wife cannot recover for loss of time caused by an injury to her, unless she is engaged in the prosecution of a separate business which thereby suffers detriment: *Tuttle v. C. R. I. & P. R. Co.*, 42-518.

The wife is entitled to no claim against the husband or his estate for services rendered him, such as caring for him during insanity, etc., and a

contract for such services would be void: *Grant v. Green*, 41-88.

The wife cannot recover wages from a third party for work performed for the husband, as boarding hands, etc., under a contract between the husband and such party: *Lyle v. Gray*, 47-153.

This section does not give the wife a right of action generally against the husband. That right exists only as given in § 2204: *Peters v. Peters*, 42-182.

SEC. 2212. Neither husband nor wife is liable for the debts or liabilities of the other incurred before marriage, and, except as herein otherwise declared, they are not liable for the separate debts of each other; nor are the wages, earnings, or property of either, nor is the rent or income of such property, liable for the separate debts of the other.

Before the adoption of the code it was held that the husband was liable for the torts of the wife as at common law, notwithstanding this section (13th G. A. ch. 126, § 1): *McElfresh*

v. Kirkendall, 36-224; but now see Code, § 2205.

The section considered: *Patterson v. Spearman*, 37-36.

Property of one
not liable for
debts of the
other.
R. 2 2505.
C. 51 § 1453.

13 G. A. ch. 126.

SEC. 2213. Contracts may be made by a wife and liabilities incurred, and the same enforced by or against her to the same extent and in the same manner as if she were unmarried.

Contracts of
wife.
R. 2 2506.
C. 51, 1454.

The statute in bestowing upon the wife equal property rights with the husband imposes upon her the same obligations. So held, in relation to the ratification by the wife of an instrument conveying the homestead:

Spafford v. Warren, 47-47.

A married woman may make a valid contract for the purchase of real property. Previous cases in Iowa upon the power of a married woman to contract, discussed: *Shields v. Keys*, 24-28; and see *Lowe v. Anderson*, 41-476.

SEC. 2214. The expenses of the family and the education of the children, are chargeable upon the property of both husband and wife, or of either of them, and in relation thereto they may be sued jointly or separately.

Property of
both liable.
R. 2 2507.
C. 51, § 1455.

In the absence of fraud and collusion between the husband and the creditor, the acts, agreements and promises of the husband in relation to family expenses, etc., are binding upon the wife, without any express consent or action on her part. The husband may change the form of indebtedness, as by giving a new note, without releasing her: *Lawrence v. Sinnamon*, 24-80.

In such cases the statute of limitations commences to run in favor of the wife only from the maturity of the indebtedness as contracted by the husband; and where a husband gave his note in payment of an account for family expenses, held, that the action against the wife was not barred until ten years from the date of the note: *Ibid.*

The wife is liable although the

vendor made the contract with, and extended the credit to, the husband alone: *Smedley v. Felt*, 41-588.

"Expenses of the family" are not limited to necessary expenses. Any expenditure is contemplated which is incurred on account of articles to be used in the family; and the purchase of a piano, held to be a family expense: *Ibid.*; so the purchase of a cook stove and fixtures comes properly under the head of family expenses: *Finn v. Rose*, 12-565; but the purchase of a reaping machine used by the husband in prosecuting his business of farming by which he supports his family, is not a family expense: *McCormick v. Muth*, 49-536; nor is the purchase of a plow: *Russell v. Long*, 52-250. The expenses of treatment of a wife at a hospital for the insane, held, not to be a fami-

ly expense: *County of Delaware v. McDonald*, 46-170.

In the cases contemplated in this section, the wife is jointly liable with the husband and the indebtedness is the debt of both: *Smedly v. Felt*, 43-607; and she may be sued thereon alone: *Farrar v. Emery*, 52-725.

A personal judgment may be rendered against the wife where she is sued jointly with the husband for

family expenses, notwithstanding the husband has a discharge in bankruptcy: *Jones v. Glass*, 48-345.

A party who furnishes money to the husband to pay indebtedness for family expenses, has no right of action against the wife therefor, where the money is not furnished at her request nor upon an assignment of the account: *Sherman v. King*, 51-182.

Rights of both
as to the home-
stead.
R. § 2514.
C. § 1, § 1462.

SEC. 2215. Neither husband nor wife can remove the other, nor their children, from their homestead without his or her consent, and if he abandons her she is entitled to the custody of their minor children, unless the district or circuit court, upon application for that purpose, shall, for good cause, otherwise direct.

Interest of
in property
may be con-
veyed.
R. § 1500.

Proceedings.
R. § 1501.

Name.
R. § 1502.

Some.
R. § 1503.

SEC. 2216. Where either the husband or wife is insane, and incapable of executing a deed, and relinquishing or conveying his or her right to the real property of the other, the sane person may petition the district or circuit court of the county where such petitioner resides, or of the county where said real estate is situated, setting forth the facts and praying for an order authorizing the applicant or some other person to execute a deed of conveyance and thereby relinquish the interest of either in the real property of the other.

SEC. 2217. The petition shall be verified by the oath of the petitioner, and shall be filed in the office of the clerk of the district or circuit court of the proper county. The court shall appoint some discreet person or attorney guardian for the person alleged to be insane, who shall ascertain as to the propriety, good faith, and necessity of the prayer of the petitioner, and who shall have power to resist said application, and subpoena witnesses, or to take depositions to disprove the petition and prove the impropriety of granting said petition, which guardian or attorney shall be allowed by the court a reasonable compensation to be paid as the other costs.

SEC. 2218. Upon the hearing of said petition, if the court is satisfied that the same is made in good faith, and that the petitioner is the proper person to exercise the power and make the conveyances, and that such power is necessary and proper, said court shall enter up a decree, thereby fully authorizing the execution of all such conveyances for and in the name of such husband or wife, by such person as the court may appoint.

SEC. 2219. All deeds executed as provided in the three preceding sections shall be valid in law, and shall convey the interest of such insane person in the real estate so conveyed; provided said power shall cease and become void as soon as he or she shall become sane and of sound mind, and apply to the court to revoke said power, and the same shall be revoked; but such revocation shall in nowise affect conveyances previously made.

CHAPTER 3.

OF DIVORCE, ANNULLING MARRIAGES, AND ALIMONY.

SECTION 2220. The district or circuit court in the county where jurisdiction either party resides, has jurisdiction of the subject matter of this chapter.

The residence contemplated in this and the following section is a legal and not merely an actual residence; such a residence as that when a man leaves it he has an intention of returning to it: *Hinds v. Hinds*, 1-36.

A mere temporary sojourn for a season without intention of domiciliation and citizenship is insufficient: *Smith v. Smith*, 4 Gr. 266; *Whitcomb v. Whitcomb*, 46-437, 443. And see *Rush v. Rush*, 48-701.

SEC. 2221. Except where the defendant is a resident of this state served by personal service, the petition for divorce, in addition to the facts on account of which the plaintiff claims the relief sought, must state that the plaintiff has been for the last year a resident of the state, specifying the town and county in which he has so resided, and the entire length of his residence therein, after deducting all absences from the state; that he is now a resident thereof; that such residence has been in good faith and not for the purpose of obtaining a divorce only; and it must in all cases state that the application is made in good faith, and for the purpose set forth in the petition.

[The words "and expects to remain," as they stand in the eighth line of the section in the printed code are omitted in accordance with the list of "errata" in that volume. They are not found in the original rolls.]

SEC. 2222. All the statements above required, and all other allegations of the petitioner must be verified by the oath of the plaintiff, and proved to the satisfaction of the court by competent evidence. Unless the court is satisfied that the allegations of residence are fully proved, the hearing shall proceed no further, and the action shall be dismissed by the court on its own motion. No divorce shall be granted on the testimony of the plaintiff alone, and all such actions shall be heard in open court on the testimony of witnesses, or depositions taken as in other equitable actions triable upon oral testimony, or by a commission appointed by the court.

That a petition for a divorce is not sworn to does not deprive the court of jurisdiction or render subsequent proceedings invalid: *McCraney v. McCraney*, 5-232, 254.

A trial before a referee is not valid even when both parties consent there-

to. The trial must be before a court: *Hobart v. Hobart*, 45-501.

The consent of the parties will not warrant the court in granting a divorce unless proper ground therefor is shown: *Lyster v. Lyster*, 1-130.

SEC. 2223. Divorces from the bonds of matrimony may be decreed against the husband for the following causes:

1. When he has committed adultery subsequent to the marriage;
2. When he wilfully deserts his wife and absents himself without a reasonable cause for the space of two years;
3. When he is convicted of felony after his marriage;

Causes of
R. § 234.
C. 51 § 1482.

4. When, after marriage, he becomes addicted to habitual drunkenness;

5. When he is guilty of such inhuman treatment as to endanger the life of his wife.

As to the kind and amount of proof necessary to warrant a divorce on the ground of adultery, see *Inskeep v. Inskeep*, 5-204.

When the wife deserts the husband without reasonable ground and before she has been absent long enough to entitle him to a divorce he commits adultery, the wife is entitled to divorce and alimony: *Wilson v. Wilson*, 40-230.

A reasonable cause for desertion must be one which would *prima facie* entitle the party so deserting to a divorce: *Pierce v. Pierce*, 33-238.

Whether the desertion and *absence* must be without reasonable causes, *quare*, though it may well be questioned whether the true meaning is not "when the defendant wilfully deserts her without reasonable cause and absents himself for two years." But the reasonable cause here contemplated is wrongful conduct on the part of the wife, amounting to a good excuse for the husband's desertion and absence. No other cause can be shown than one arising from the fault of the wife. The statute does not require that the *absence* shall be wilful, and therefore *held* that if the desertion occurred while the defendant was sane, his subsequent insanity was no excuse: *Douglass v. Douglass*, 31-421.

In case of application for a divorce on ground of desertion, the petition must state that such desertion was "without reasonable cause:" *Pinkney v. Pinkney*, 4 Gr., 324.

A conviction of felony from which an appeal has been prosecuted and which is liable to reversal, is not sufficient ground for a divorce. The

conviction must be final and absolute. *Vinsant v. Vinsant*, 49-639.

In an action for divorce on the ground of inhuman treatment, past treatment is not of itself a ground and is material only as showing a just foundation for the apprehended danger to life. Threats of violence, where there is danger of harm to the life, will be sufficient, but threatened injury, causing apprehension of bodily harm merely, will not be sufficient. The question is, whether there is reasonable apprehension of danger to the life: *Beebe v. Beebe*, 10-133.

Treatment calculated to affect the mind of plain iff so as to destroy her health and ultimately endanger her life, or which involves by natural consequence a permanently injurious and prejudicial effect upon her health, will be sufficient: *Caruthers v. Caruthers*, 13-266; *Cole v. Cole*, 23-433.

Cruel treatment will not justify a divorce unless it be such as to furnish reasonable ground to apprehend physical danger in the further continuance of the marriage relation and must not be such as is caused by the party's own misconduct: *Knight v. Knight*, 31-451.

Insanity existing at the time of the marriage, or occurring subsequently thereto, is n't a ground for divorce, nor is inhuman treatment, if the party guilty thereof is insane: *Wertz v. Wertz*, 43-534.

The facts showing that the treatment is inhuman, and such as to endanger life, must be stated. General allegations to that effect will not be sufficient: *Freerking v. Freerking*, 19-34.

SEC. 2224. The husband may obtain a divorce from his wife for like cause, and also when the wife at the time of the marriage was pregnant by another than her husband, unless such husband have an illegitimate child or children then living, which was unknown to the wife at the time of their marriage.

SEC. 2225. The defendant may obtain a divorce for like causes Cross-petition. as above stated, by filing a cross-petition.

The cross-petition here contemplated may be based on causes of divorce occurring subsequently to the commen-

mencement of the original action: *Wilson v. Wilson*, 40-30.

Maintenance during litigation. SEC. 2226. The court may order either party to pay the clerk a sum of money for the separate support and maintenance of the

adverse party and the children, and to enable such party to prosecute or defend the action.

To warrant an order granting temporary alimony, the fact of marriage between the parties must be admitted or proved: *York v. York*, 34-530.

In a proceeding to vacate a decree of divorce, the court has no power to require defendant to pay plaintiff a sum of money to enable her to prosecute the action. To authorize such an

order, it is essential that the marriage relation should exist: *Wilson v. Wilson*, 49-544; and see notes to § 2229.

The court may, pending a proceeding for divorce, make temporary provision as to the custody as well as the support of the children: *Green v. Green*, 52-403.

Applied: *Small v. Small*, 42-111.

SEC. 2227. The petition may be presented to the court or judge for the allowance of an order of attachment; and said court or judge may, by endorsement thereon, direct such attachment and the amount for which the same may issue and the amount of the bond, if any, that shall be given, and the clerk shall issue the same accordingly; and any property taken by virtue thereof shall be held to satisfy the judgment or decree of the court, but may be discharged or released as in other cases.

This attachment will not affect the lien of a creditor of the husband whose judgment is obtained prior to the decree; nor can the decree be dated

back to the time of attachment so as to cut out intervening judgments: *Daniels v. Lindley*, 44-557.

SEC. 2228. In making such orders, the court or judge shall take into consideration the age, condition, sex, and pecuniary condition of the parties, and such other matters as are deemed pertinent, which may be shown by affidavits in addition to the pleadings or otherwise, as the court or judge may direct.

SEC. 2229. When a divorce is decreed, the court may make such order in relation to the children, property, parties, and the maintenance of the parties as shall be right and proper. Subsequent changes may be made by the court in these respects when circumstances render them expedient.

IN GENERAL: The relation of husband and wife must exist either *de jure* or *de facto* to justly an order for alimony: *Blythe v. Blythe*, 25-266. (and see notes to § 226); and an action for alimony cannot be maintained as an independent proceeding after the divorce of the parties: *Wilde v. Wilde*, 36-319.

A court of equity will entertain a suit for alimony alone, without divorce, where the wife is separated from the husband on account of misconduct on his part justifying the separation: *Graes v. Graes*, 36-319; *Whitcomb v. Whitcomb*, 46-437.

Upon the death of the defendant, a proceeding for divorce abates, and with it all claim for alimony: *O'Hagan v. Exec'r of O'Hagan*, 4-503; *Barney v. Barney*, 14-189.

The power to allow alimony is an incident of the power to divorce, and such relief may be given in an action for divorce, although there is no statement in the original notice of any claim therefor: *McEwen v. Mc-*

Situation of parties considered.

Children: maintenance: changes made R. 42337. C. 51, § 1485

Ewen, 26-375, and although service of notice is had by publication only; and in such case the court may declare and enforce a lien for alimony against real estate of the defendant situated in a other county: *Harshberger v. Harshberger*, 26-503.

Alimony, custody of the children, etc., may be regulated by order of the court, although no reference thereto is made in the pleadings: *Zuer v. Zuer*, 36-130.

The court may give the wife a specific portion of the husband's property in fee: *Jolly v. Jolly*, 1-9; but, *contra*, *Russell v. Russell*, 4 Gr. 26.

Where the husband was given the custody of the children and a general judgment for alimony was rendered in favor of the wife, *held*, that such judgment could not be enforced against the homestead which the husband and children continued to occupy: *Byers v. Byers*, 21-268; but where the decree makes the alimony a lien upon specific property, the fact that such property is a homestead

cannot be taken advantage of after decree. It should be set up in the action: *Hemenway v. Wood*, 53-21.

Where the wife, without sufficient excuse, had left the husband, and the latter had afterwards committed adultery, for which a divorce was granted the wife, held that she was also entitled to alimony: *Dupont v. Dupont*, 10-112.

Where a divorce is granted the husband on account of the adultery of the wife, she will not be entitled to alimony, unless under peculiar circumstances: *Fivecoat v. Fivecoat*, 32-198.

As to amount and kind of alimony proper to be allowed under particular facts, see *Inskeep v. Inskeep*, 5-204; *Abey r. Abey*, 32-575; *Farley v. Farley*, 30-353; as to disposition of property, children, etc., see *Hunt v. Hunt*, 4 Gr., 216; *Cole v. Cole*, 23-433.

A decree of divorce may, under § 3154, be set aside when obtained by fraud of the plaintiff in a court having no jurisdiction by reason of plaintiff not being a resident of the county as required by § 2220: *Rush v. Rush*, 46-645; *S. C.*, 48-701; and that the party by whose fraud the divorce was obtained has re-married will not prevent the decree being set aside: *Whitcomb v. Whitcomb*, 46-437.

SUBSEQUENT CHANGES: The first sentence of the section is probably only declarative of the law as it stood before the statute; but the last sentence doubtless effectuates a change in the law, or at least in the manner of enforcing it: *Fivecoat v. Fivecoat*, 32-198.

The right to a change in a previous decree as to alimony does not exist after the death of the party against whom the change is sought, and proceedings already commenced therefor abate upon the death of such party: *O'Hagan r. Ex'r of O'Hagan*, 4-509.

The power of the court to modify

SEC. 2230. When a divorce is decreed, the guilty party forfeits all rights acquired by the marriage.

A decree of divorce against the wife as the guilty party bars any claim to dower in the property of the husband: *McCraney v. McCraney*, 5-

232, 259.

This section seems to have been omitted from the Revision by accident: *Cole Com'r's Rep.*, p. 68.

ANNULLING ILLEGAL MARRIAGES.

Causes specified. **SEC. 2231.** Marriages may be annulled for the following causes:

1. Where marriage between the parties is prohibited by law;

2. Where either party was impotent at the time of marriage;
3. Where either party had a husband or wife living at the time of the marriage, provided they have not lived and cohabited together, as provided in section two thousand two hundred and one, of chapter one of this title;
4. Where either party was insane or idiotic at the time of the marriage.

Impotency, insanity and idiocy are | *Wertz*, 43-534.
not grounds for divorce: *Wertz v.*

SEC. 2232. A petition shall be filed in such cases as in actions ^{Petition,} for divorce, and all the provisions of this chapter shall apply to such cases except as otherwise provided.

SEC. 2233. When the validity of a marriage is doubted, either ^{Validity} party may file a petition, and the court shall decree it annulled or ^{doubted.} affirmed according to the proof.

SEC. 2234. When a marriage is annulled on account of the children, consanguinity or affinity of the parties, or because of impotency, the issue shall be illegitimate; but when on account of non-age or insanity, or idiocy, the issue is the legitimate issue of the party capable of contracting marriage.

SEC. 2235. When a marriage is annulled on account of a ^{When, and of} prior marriage, and the parties contracted the second marriage in ^{which parent} good faith, believing the prior husband or wife to be dead, that ^{children be-} fact shall be stated in the decree of annulment; and the issue of ^{come legit-} the second marriage begotten before the decree of the court, is ^{mate.} the legitimate issue of the parent capable of contracting.

SEC. 2236. In case either party entered into the contract of ^{Compensation} marriage in good faith, supposing the other to be capable of contracting, and the marriage is declared a nullity, such fact shall be entered in the decree, and the court may decree such innocent party compensation as in cases of divorce.

CHAPTER 4.

OF MINORS.

SECTION 2237. The period of minority extends in males to the ^{Majority.} age of twenty-one years, and in females to that of eighteen <sup>R. § 1539.
C. 51, § 1487.</sup> years; but all minors attain their majority by marriage.

The disability of minority is terminated by death, and the year which by § 892 is allowed a minor for redeeming his land from tax sale after his disability is removed, commences from that time and not from the time he would have become of age: *Gibbs v. Saeyer*, 48-443.

If by reason of the minor having obtained majority by marriage or by the provisions of section 2239 he is entitled to his own time and earnings, he may, in a suit for injuries, recover damages for loss of time prior to reaching the age of majority: *Nelson v. C. R. I. & P. R. Co.*, 35-564.

SEC. 2238. A minor is bound, not only by contracts for necessities, but also by his other contracts, unless he disaffirms them within a reasonable time after he attains his majority, and restores

<sup>Contracts and
disaffirmance.</sup>
<sup>R. § 2340.
C. 51, § 1488.</sup>

to the other party all money or property received by him by virtue of the contract and remaining within his control at any time after his attaining his majority.

At common law the general rule was that the minor was not bound unless by some act he had positively affirmed the contract, but under the statute a disaffirmance within a reasonable time is necessary to release him from obligation: *Wright v. Germain*, 21-583; *Murphy v. Johnson*, 45-57.

What will be a reasonable time within which to disaffirm must be determined by the peculiar circumstances of each case: *Stout v. Merrill*, 35-47.

As to what is a "reasonable time," see *Jenkins v. Jenkins*, 12-195; *Weaver v. Carpenter*, 4-343; *Jones v. Jones*, 46-406, 973.

In case of the marriage of the minor, a reasonable time for disaffirmance

commences to run from time of such marriage: *Jones v. Jones*, *supra*.

The right of an infant to avoid his contracts is absolute and paramount to all equities in favor of third persons, even purchasers without notice: *Jenkins v. Jenkins*, 12-195; and although the restoration of the fruits of the contract is essential to the disaffirmance thereof: *Stout v. Merrill*, 35-47; yet the minor is only bound to restore money or property received by virtue of the contract remaining under his control after obtaining majority: *Jenkins v. Jenkins*, *supra*.

The minor may disaffirm his contract before attaining majority: (Overruling *Murphy v. Johnson*, 45-57); *Childs v. Dabbs*, 55-205.

SEC. 2239. No contract can be thus disaffirmed in cases where, on account of the minor's own misrepresentations as to his majority, or from his having engaged in business as an adult, the other party had good reason to believe the minor capable of contracting.

The cases enumerated in this section are *exceptions* to those contracts which may be disaffirmed as provided in the preceding section: *Oswald v. Broderick*, 1-380.

The fact that an infant is engaged in business as an adult does not make his contracts binding unless the party with whom he contracts is thereby deceived and believes that he is of age. If the fact of minority is known to the other party the minor is not bound: *Beller v. Marchant*, 30-150.

The exception here made as to the power of a minor to disaffirm his contracts by reason of his having engaged in business as an adult, applies not only to contracts made by him in the conduct of such business, but to all contracts: *Jacques v. Saz*, 39-367.

Where a minor is entitled to his own time and earnings, he may recover damages for personal injury prior to the time of attaining majority: *Nelson v. C. R. I. & P. R. Co.*, 38-564, 568.

SEC. 2240. Where a contract for the personal service of a minor has been made with him alone, and those services are afterwards performed, payment made therefor to such minor in accordance with the terms of the contract, is a full satisfaction for those services, and the parent or guardian cannot recover therefor a second time.

The provisions of this section do not change the rule that the father has the right to the custody, control and services of the minor, and may recover damages against another who deprives him of such right, unless the minor has been emancipated; and even after emancipation the father may re-assert his control. The emancipation sets the son free and gives him capacity to manage his own affairs as if of age, and may be shown by circumstances as well by direct proof: *Everett v. Sherley*, 1-356.

Where a minor with the consent of the father has engaged in business for himself, his earnings are not subject to his father's debts: *Walcott v. Rickey*, 22-171.

If a minor has been paid for his personal services according to contract, his next friend has no more right to recover a second time for such services than the parent or guardian has: *Murphy v. Johnson*, 45-57.

Section applied: *Nixon v. Spencer*, 1-2146.

Misrepresentations of.
R. § 2541.
C. 51. § 1489.

Payments to
R. § 2542.
C. 51. § 1390.

CHAPTER 5.

OF THE GUARDIANSHIP OF MINORS, DRUNKARDS, SPENDTHRIFTS,
AND LUNATICS.

SECTION 2241. The parents are the natural guardians of their minor children, and are equally entitled to the care and custody of them.

Natural guar-

dian.

R. § 2543.

C. '51, § 1491.

SEC. 2242. Either parent dying before the other, the survivor becomes the guardian. If there be no parent or guardian qualified and competent to discharge the duty, the circuit court shall appoint a guardian.

Death of either parent.

R. § 2544.

C. '51, § 1492.

In case of the death of the father, the mother has the right to sue as guardian for the earnings of the minor: *Cain v. Detitt.* 8-116.

SEC. 2243. If the minor has property not derived from either parent, a guardian must be appointed to manage such property, which may be either parent if suitable and competent.

of property.

R. § 2545-6.

C. '51, §§ 1493-4

SEC. 2244. If the minor be over the age of fourteen years and of sound intellect, he may select his own guardian, subject to the approval of the circuit court of the county where his parents, or either of them, reside; or if such minor is living separate and apart from his parents, the circuit court of the county where he resides has jurisdiction.

Minor may choose.

R. § 2547.

C. '51, § 1495.

SEC. 2245. The guardian and court making the appointment, have power and authority over any property of the minor situate or being in any other county to the same extent and in the manner as if the same was situate in the county where the appointment was made. But when any order is made by such court affecting the title of lands lying in another county, a certified copy of the same, and of all the papers on which it is founded, shall be transmitted to the clerk of the circuit court in the county where such lands are situated, and such clerk shall enter such order on the proper docket and index the same, and make a complete record thereof in the same manner as if the cause in which the order is made had been commenced in his court.

[The word "his" before "court" in the last line, as it stands in the original, is omitted in the printed code.]

The power of the guardian ceases on the death of the ward. The settlement of the estate devolves on the administrator: *Ordway v. Phelps,* 45-279.

SEC. 2246. Guardians appointed to take charge of the property of a minor must give bond, with surety, to be approved by the court, in a penalty double the value of the personal estate and of the rents and profits of the real estate of the minor, conditioned for the faithful discharge of their duties as such guardians according to law. They must also take an oath of the same tenor as the condition of the bond.

Bond and oath.

R. § 2548.

C. '51, § 1496.

The sureties on the bond here required, are not liable for the failure of the guardian to account for funds coming into his hands from the sale of the ward's lands under the author-

ity of the court, given in pursuance of §§ 2257-2260, a special bond being required in such cases (§ 2261): *Madison County v. Johnston,* 51-152.

SEC. 2247. The court may also direct guardians to give new or supplemental security, or may remove them for good cause shown, which cause must be entered on the records.

SEC. 2248. Within forty days after their appointment, they must make out an inventory of all the property of the minor, which shall be appraised in the same manner as the property of a deceased person. The inventory must be filed in the office of the clerk of the circuit court.

SEC. 2249. Guardians of the persons of minors, have the same power and control over them that parents would have if living.

SEC. 2250. Guardians of the property of minors must prosecute and defend for their wards. They must also, in other respects, manage their interests under the direction of the court. They may thus lease their lands or loan their money during their minority, and may do all other acts which the court may deem for the benefit of the wards.

SEC. 2251. A failure to comply with any order of the court in relation to guardianship, shall be deemed a breach of the condition of the guardian's bond, which may accordingly be put in suit by any one aggrieved thereby, for which purpose the court may appoint another guardian of the minor if necessary. The court may also commit him to jail until he complies with such order.

Section considered: *O'Brien v. Strang*, 42-643.

SEC. 2252. Where a new guardian is appointed, the court may order the effects of the minor which are in the hands of his predecessor to be delivered up to such new guardian, and failure to comply with such order for three months thereafter, shall subject such guardian to a penalty of one hundred dollars to be recovered in an action on his bond for the benefit of such minor's estate.

SEC. 2253. A guardian may be appointed for non-resident minors who have property in this state, on proper application made to the circuit court of the county in which such property or any part thereof may be, who shall qualify in the same manner and shall have the same powers, and be subject to the same rules as guardians of resident minors.

SEC. 2254. All guardians of minors are required to appear at least once each year before the circuit court, and render an account of all moneys or other property in their possession, together with all the interest which may have accrued on moneys loaned belonging to the minor or minors.

SEC. 2255. In case the said guardian shall fail to appear before said court within the time above specified, he shall forfeit and pay into the county treasury the sum of fifty dollars, as in other actions of misdemeanor.

SEC. 2256. Guardians shall receive such compensation as the court may from time to time allow. The amount allowed, and the service for which the allowance was made, must be entered upon the records of the court.

PROPERTY OF—SOLD.

SEC. 2257. When not in violation of the terms of a will by which a minor holds his real property, it may, under the direction

Real estate:
site or mort-
gage of.
R. § 2552.
C. § 1500.

of the circuit court, be sold or mortgaged on the application of the guardian, either when such sale or mortgage is necessary for the minor's support or education, or where his interest will be thereby promoted by reason of the unproductiveness of the property, or of its being exposed to waste, or of any other peculiar circumstances.

If the court has jurisdiction of the subject matter and the parties, its judgment, in absence of fraud, is conclusive and cannot be collaterally attacked: *Pursley v. Hayes*, 22-11; and if the minor receives and retains the proceeds of the sale he is estopped from attacking it, even though it be void: *S. C.*, 17-310; *Deford v. Mercer*, 24-118.

A refusal by the court to order a sale when proper grounds therefor are shown, is an error which will be corrected on appeal. The discretion with which the court is clothed is not absolute, but a legal discretion: *Dickinson v. Hughes*, 37-160.

SEC. 2258. The petition for that purpose must state the grounds of the application, must be verified by oath, and a copy thereof, with a notice of the time at which such application will be made to the court, must be served personally upon the minor at least ten days prior to the time fixed for such application.

The notice is essential to the jurisdiction of the court; without it the sale will be void; but a defective notice will be sufficient to give jurisdiction, and the proceedings thereunder cannot be collaterally attacked: *Lyon v. Vanatta*, 35-521. But the time fixed for the hearing must be at a term of court, and a notice fixing a time not during a term, or which does not fix any time, is no notice, and proceedings thereunder will be void: *Ibid.; Hawe v. Clark*, 37-355.

If there is no service of notice the proceedings will be void: *Rankin v. Miller*, 43-11; but if there is defective service, which is by the court held sufficient, any error in such holding cannot be the subject of collateral attack: *Pursley v. Hayes*, 22-11, 33.

Where it appeared that there was

The term mortgage is here used in its general sense of granting an estate as pledge for the payment of money, without reference to the form which the grant assumes: *Foster v. Young*, 35-27.

Similar provisions in R. S. considered: *Frazier v. Steenrod*, 7-339.

A father merely as natural guardian has no authority to sell land of his child, even when authorized to do so by order of the probate court, and a deed made by him will not be valid, even as against him when he subsequently acquires the title by inheritance from the child: *Shanks v. Seamonds*, 24-131.

SEC. 2258. The petition for that purpose must state the grounds of the application, must be verified by oath, and a copy thereof, with a notice of the time at which such application will be made to the court, must be served personally upon the minor at least ten days prior to the time fixed for such application.

service, and the record of the court granting the power to sell recited that notice according to law had been given, *held*, that the regularity of the manner of giving notice could not be inquired into collaterally: *Wade v. Carpenter*, 4-361.

The question as to the validity of proceedings in such cases, as affected by defects in the notice, etc., and as to what presumptions are to be indulged in favor of their regularity, etc., discussed under the provisions of R. S., chap. 162: *Cooper v. Sunderland*, 3-114, and see similar questions discussed in notes to §§ 2388 and 2389.

Where the application was for authority to sell, *held*, that the guardian had no power to mortgage: *McManus v. Rice*, 48-361.

SEC. 2259. The court, in its discretion, may direct a postponement of the matter, and may order such farther publication through the newspapers or otherwise, as it may deem expedient.

SEC. 2260. It may also direct a reference for the purpose of ascertaining the propriety of ordering the sale or mortgage as applied for.

SEC. 2261. Before any such sale or mortgage can be executed, the guardian must give security to the satisfaction of the court, the penalty of which shall be at least double the value of the property to be sold, or of the money to be raised by the mortgage,

Petition.

R. 2253.

C. '51, § 1501.

Postponement and publication.

R. 2554.

C. '51, § 1502.

Reference.

R. 2555.

C. '51, § 1503.

Bond to be given before sale.

R. 2556.

C. '51, § 1504.

conditioned that he will faithfully perform his duty in that respect, and account for and apply all moneys received by him under the direction of the court.

Action on the bond cannot be brought until the guardian has failed to obey some order of the court in respect to such money as contemplated in § 2251: *O'Brien v. Strang*, 42-643.

The sureties on this bond and not those upon the general bond are liable for failure of guardian to account for proceeds of the sale: See note to § 246.

SEC. 2262. When the application for the sale of property is resisted, the court may, in its discretion, award costs to the prevailing party; and, when satisfied that there was no reasonable ground for making the application, may direct the costs to be paid by the guardian from his own funds.

SEC. 2263. Deeds may be made by the guardian in his own name, but they must be returned to the court and the sale or mortgage be approved before the same are valid.

This approval by the court is not a mere formality but is essential to the validity of the sale or mortgage. It is the sale and not merely the deed that is approved: *Wade v. Carpenter*.

Costs.
R. § 2557.
C. '51, § 1505.

Deeds: how
made: court
must approve.
R. § 2558.
C. '51, § 1506.

Directions as to
sale.
R. § 2559.
C. '51, § 1507.

Validity of
after five years.
R. § 2560.
C. '51, § 1508.

SEC. 2264. The same rule that is prescribed in the sale of real property by executors, shall be observed in relation to the evidence necessary to show the regularity and validity of the sales above contemplated.

SEC. 2265. No person can question the validity of such sale after the lapse of five years from the time it was made.

To avail himself of the limitation here provided the defendant must show that he has been in continuous possession of the property for five years: *Washburn v. Carmichel*, 32-475.

The limitation does not apply when the sale is void, as in case of failure to notify the minor as provided in § 2253: *Rankin v. Miller*, 43-11. But if the sale is made pursuant to an order of a court having jurisdiction, it cannot be attacked after five years for irregularities in the proceedings: *Pursley v. Hayes*, 22-11, 24. See generally, as applicable to this section, notes to § 2401; the opinion of Beck and Cole, JJ., in *Good v. Norley*, 28-188, being stated by Beck, J., as applicable to this section: *Washburn v. Carmichel*, 32-475.

FOREIGN GUARDIANS.

Foreign guar-
dians.
R. § 2564.
C. '51, § 1512.
I.G.A. ch. 125.

Appoint-
ment: how
made.
R. § 2565.
C. '51, § 1513.

Same.
R. § 2566.
C. '51, § 1514.

SEC. 2266. The foreign guardian of any non-resident minor, may be appointed the guardian in this state of such minor by the circuit court of the county wherein he has any property, for the purpose of selling or otherwise controlling that and all other property of such minor within this state, unless a guardian has previously been appointed under the preceding section.

SEC. 2267. Such appointment may be made upon his filing with the clerk of the circuit court of the county wherein there is any such property, an authenticated copy of the order for his appointment. He shall thereupon qualify like other guardians, except as in the next succeeding section.

SEC. 2268. Upon the filing of an authenticated copy of the bond and the inventory rendered by the guardian in a foreign state, if the court is satisfied with the sufficiency and the amount of the security, it may dispense with the filing of an additional bond.

SEC. 2269. Foreign guardians of non-resident minors may be authorized by the circuit court of the county wherein such minor has personal property, to receive the same on complying with the provisions of the following sections.

SEC. 2270. Such foreign guardian shall file in the office of the clerk of the circuit court in the county where the property is situated, a certified copy of his official bond, duly authenticated by the court granting the letters of guardianship, and shall also execute a receipt for the property received by him.

SEC. 2271. Upon the filing of the bond as provided by the last section, and the court being satisfied with the amount of said bond, said court shall order the personal property of the minor to be delivered to the guardian; and the court shall spread the bonds and receipt on its records, and direct the clerk to notify, by mail, the court granting the letters of guardianship, of the amount of property allowed to the guardian, and the date of the delivery of the same.

OF DRUNKARDS, SPENDTHRIFTS, AND LUNATICS.

SEC. 2272. When a petition is presented to the circuit court, verified by affidavit, that any inhabitant of the county is:

1. An idiot, lunatic, or person of unsound mind; R. § 1449.
2. An habitual drunkard incapable of managing his affairs;
3. A spendthrift who is squandering his property; and the allegations of the petition have been satisfactorily proved upon the trial provided for in the following section, such court may appoint a guardian of the property of any such person, who shall be the guardian of the minor children of his ward, unless the court otherwise orders.

The appointment of a guardian upon a petition charging insanity, will be regarded as a determination of the fact of insanity: *Ockendon v. Barnes*, 43-615.

SEC. 2273. Such petition shall set forth as particularly as may be, the facts upon which the application is based, and shall be answered as in other ordinary actions, all the rules of which shall govern so far as applicable and not otherwise provided in this chapter. The applicant shall be plaintiff and the other party defendant, and either party may have a trial by jury. The petition may be presented to the judge, who may appoint a temporary guardian.

SEC. 2274. The provisions of this chapter, and all other laws relating to guardians for minors, and regulating or prescribing the powers, duties, or liabilities of each and of the court, so far as the same are applicable, shall be held to apply to guardians and their wards appointed under section two thousand two hundred and seventy-two of this chapter.

SEC. 2275. Such guardian may sue in his own name, describing himself as guardian of the ward for whom he sues; and when his guardianship shall cease by his death, removal, or otherwise, or by the decease of his ward, any suit, action, or proceeding then pending shall not abate; but his successor, or the person for whom he was guardian, or the executor or administrator of such person, as the case may require, shall be made party to the suit or

other proceedings, in like manner as is or may be provided by law for making an executor or administrator party to a proceeding of a like kind when the plaintiff dies during its pendency.

Real estate of
may be sold.
R. § 1453.

SEC. 2276. Whenever the sale of the real estate of such ward is necessary for his support, or the support of his family, or the payment of his debts, or will be for the interest of the estate or his children, the guardian may sell the same under like proceedings as required by law to authorize the sale of real estate by the guardian of a minor.

Guardian to
complete con-
tracts.
R. § 1454.

SEC. 2277. The guardian of any person contemplated in section two thousand two hundred and seventy-two of this chapter, whether appointed by a court in this state or elsewhere, may complete the real contracts of his ward, or any authorized contracts of a guardian who has died or been removed, in like manner and by like proceeding as the real contract of a decedent may, under an order of court, be specially performed by his executor or administrator.

When estate is
insolvent.
R. § 1455.

SEC. 2278. If the estate of such person is insolvent, or will probably be insolvent, the same shall be settled by the guardian in like manner, and like proceedings may be had as is or may be required by law for the settlement of the insolvent estate of a deceased person.

Custody of:
prior right to.
12 G. A. ch. 179,
§ 12.

SEC. 2279. The priority of claim to the custody of any insane person, habitual drunkard, or spendthrift aforesaid, shall be:

1. The legally appointed guardian;
2. The husband or wife;
3. The parents;
4. The children.

CHAPTER 6.

MASTER AND APPRENTICE.

Minors.
R. § 2573.
C. 51, § 1516.

SECTION 2280. Any minor child may be bound to service until the attainment of the age of legal majority as hereinafter described.

Indenture:
when minor to
sign.
R. § 2574.
C. 51, § 1517.

SEC. 2281. Such binding must be by written indenture, specifying the age of the minor and the terms of agreement. If the minor is more than twelve years of age and not a pauper, the indenture must be signed by him of his own free will.

Consent of rela-
tives required.
R. § 2575.
C. 51, § 1518.

SEC. 2282. A written consent must be appended to or endorsed upon such agreement, and signed by one of the following persons, to-wit:

1. By the father of the minor; but if he is dead, or has abandoned his family, or is for any cause incapacitated from giving his assent, then,
2. By the mother; and if she be dead, or unable, or incapacitated for giving such assent, then,
3. By the guardian; and if there be no guardian, then by the clerk of the circuit court.

SEC. 2283. The clerk of the circuit court may bind minors ^{Paupers.}
who are paupers till they have attained the age of majority, with- <sup>R. § 2576.
C. '51, § 1519.</sup>

SEC. 2284. The written indenture must, in that case, be signed ^{Indenture.}
by the master and said clerk. <sup>R. § 2577.
C. '51, § 1520.</sup>

SEC. 2285. The indenture must, in all cases where there is a ^{Same.}
parent or guardian, be in three parts, one being left with the <sup>R. § 2578.
C. '51, § 1521.</sup>
master, another with the clerk of the circuit court, and the third
with the person by whose assent he is bound.

SEC. 2286. The powers, liabilities, and duties of the master, <sup>Powers:
rights: liabilities.</sup>
and the rights of the apprentice, are the same as those of parent <sup>R. § 2579.
C. '51, § 1522.</sup>
and child respectively, except as to inheritances and except as is otherwise provided by law.

SEC. 2287. The parent, guardian, or officer, by whose act or <sup>Duty of parent,
guardian, or
officer.</sup>
consent any minor is thus bound, must watch over the interest of <sup>R. § 2580.
C. '51, § 1523.</sup>
the minor, and, if the case require, must enter complaint as pro-
vided for in the following section.

SEC. 2288. Upon complaint by the minor or by any other per- <sup>Complaint
against master.</sup>
son made to the judge of the district or circuit court, stating <sup>R. § 2581.
C. '51, § 1524.</sup>
under oath that the master is ill-treating his apprentice or is in
any other manner palpably failing in the discharge of his duty in
regard to him, and stating the particulars with reasonable cer-
tainty, the court shall summon the master to appear and answer
such complaint.

[The word "to" before "such" in the last line in the printed code is not
in the original, and is therefore omitted here.]

SEC. 2289. The complaint, with the proper notice endorsed ^{Service of.}
thereon, must be served and returned in the same manner as in <sup>R. § 2582.
C. '51, § 1525.</sup>
the commencement of an action, and the time for appearance
shall be regulated by the same rules.

SEC. 2290. The answer of the master must also be under oath, <sup>Answer:
issue: trial.</sup>
and, if any other issue be joined thereon, it must be tried as in <sup>R. § 2583.
C. '51, § 1526.</sup>
other cases in court.

SEC. 2291. If the court or jury before whom the cause is pend- <sup>Judgment:
discharge.</sup>
ing finds the cause of complaint admitted by the master, or <sup>R. § 2584.
C. '51, § 1527.</sup>
proved upon the trial to be of sufficient magnitude to justify the
discharge of the minor from further service, judgment shall be
rendered accordingly, and a certificate of such judgment placed in
said minor's hands.

SEC. 2292. From any judgment in such cases, either the minor ^{Appeal.}
or the master may appeal in the same manner as provided for in <sup>R. § 2585.
C. '51, § 1528.</sup>
ordinary cases.

SEC. 2293. The above proceedings form no bar to the bringing <sup>Suit for dam-
ages.</sup>
of a suit by or on behalf of the minor for damages, or for compensa- <sup>R. § 2586.
C. '51, § 1529.</sup>
tion for services.

SEC. 2294. If the apprentice bound as aforesaid, refuses to <sup>Complaint
against appren-
tice.</sup>
serve according to the terms of the indenture, upon complaint made <sup>R. § 2587.
C. '51, § 1530.</sup>
in the manner aforesaid, the judge shall issue a warrant to
cause the apprentice to be brought forthwith before him, and shall
also cause notice of the proceedings to be given to the parent,
guardian, or officer by whose act or consent the minor was bound
as an apprentice, if to be found in the county.

SEC. 2295. A reasonable space of time, not exceeding three <sup>Answer: when
made.</sup>
days, shall be allowed to the minor to consult his parent, guar- <sup>R. § 2588.
C. '51, § 1531.</sup>

dian, or other friends, previous to making his answer to the complaint.

SEC. 2296. The answer must be made, and the issues thereon tried in the manner hereinafter provided.

SEC. 2297. If he shows sufficient cause for refusing to serve, he may be discharged from service in the manner hereinbefore provided.

SEC. 2298. Instead of proceeding as aforesaid, the master may, for any refusal to serve or for any gross misbehavior on the part of the apprentice, file a complaint for the purpose of releasing himself from the force and effect of the indenture aforesaid.

SEC. 2299. Proceedings thereupon shall be had similar to those provided in case of a complaint by or in behalf of the apprentice, and judgment rendered in like manner with the same right of appeal.

SEC. 2300. The death of the master, or his removal from the state, works a dissolution of the indenture unless otherwise provided therein, or unless the apprentice elects to continue in his service. And in the event of a dissolution, the apprentice shall receive such allowance for services previously rendered as may be thought necessary under the circumstances of the case.

SEC. 2301. Upon complaint being made to the circuit court of the proper county, verified by affidavit, that the father or mother of a minor child is, from habitual intemperance and vicious and brutal conduct, or from vicious, brutal, and criminal conduct towards said minor child, an unsuitable person to retain the guardianship and control the education of such child, the court may, if it find the allegations in the complaint manifestly true, appoint a proper guardian for the child, and may, if expedient, also direct that such child be bound as an apprentice to some suitable person until he attains his majority. But nothing herein shall be so construed as to take such minor child, if the mother be a proper guardian.

Where the father of an illegitimate child two years of age sought under this section to recover the custody of the same from its mother, it appears that his moral character was not better than hers, held, that it was error to deprive her of its custody: *Pratt v. Nitz*, 48-33.

SEC. 2302. The same proceedings may take place, and a like order be made where the mother, who has for any cause become the guardian of her minor child, is in like manner found to be manifestly an improper person to retain such guardianship.

SEC. 2303. The complainant in such cases must be sworn to his complaint and file it in the office of the clerk, and a copy thereof, with a notice thereon endorsed, stating the time when the matter will be brought before the circuit court for adjudication, must be served personally on the parent from whom the guardianship is sought to be taken, at least ten days before the time so fixed for the adjudication.

SEC. 2304. Issues joined shall be tried in the same manner as in ordinary civil actions.

SEC. 2305. Preference shall be given to such cases over the ordinary business of the court, but trials actually commenced need not be suspended for that purpose.

Issue: trial.
R. § 2589.
C. 51, § 1532.

Discharge of.
R. § 2590.
C. 51, § 1533.

Master released
from indenture.
R. § 2591.
C. 51, § 1534.

Proceedings.
R. § 2592.
C. 51, § 1535.

Dissolution of
by death or re-
moval.
R. § 2593.
C. 51, § 1536.

Natural guar-
dian when
removed.
R. § 2594.
C. 51, § 1537.

Proceedings.
R. § 2595.
C. 51, § 1538.

Same.
R. § 2596.
C. 51, § 1539.

Trial.
R. § 2597.
C. 51, § 1540.

Preference
over other
cases.
R. § 2598.
C. 51, § 1541.

SEC. 2306. The master shall send said minor child, after the ^{Schooling and treatment of minors.}
same be six years old, to school at least four months in each year, if there be a school in the district, and at all times the master ^{R. § 2599.}
shall clothe the minor in a comfortable and becoming manner. ^{C. '51, § 1542.}

CHAPTER 7.

OF THE ADOPTION OF CHILDREN.

SECTION 2307. Any person competent to make a will is authorized in manner hereinafter set forth, to adopt as his own the ^{Who may adopt.}
minor child of another, conferring thereby upon such child all the ^{R. § 2600.}
rights, privileges, and responsibilities which would pertain to the
child if born to the person adopting in lawful wedlock.

SEC. 2308. In order thereto, the consent of both parents, if living and not divorced or separated, and if divorced or separated or, if unmarried, the consent of the parent lawfully having the care and providing for the wants of the child, or if either parent is dead, then the consent of the survivor, or if both parents be dead, or the child shall have been and remain abandoned by them, then the consent of the mayor of the city where the child is living, or, if not in a city, then of the clerk of the circuit court of the county where the child is living, shall be given to such adoption by an instrument in writing signed by the parties or party consenting, and stating the names of the parents, if known, the name of the child, if known, the name of the person adopting such child, and the residence of all, if known, and declaring the name by which such child is thereafter to be called and known, and stating also that such child is given to the person adopting, for the purpose of adoption as his own child.

SEC. 2309. Such instrument in writing shall be also signed by the person adopting, and shall be acknowledged by all the parties thereto in the same manner as deeds affecting real estate are required to be acknowledged; and shall be recorded in the recorder's office in the county where the person adopting resides, and shall be indexed with the name of the parents by adoption as grantor, and the child as grantee, in its original name if stated in the instrument.

Where there is an entire failure to execute the instrument here contemplated, a court of equity will not carry

out the mere intention to do so: *Long v. Hewitt*, 44-363.

SEC. 2310. Upon the execution, acknowledgment, and filing for record of such instrument, the rights, duties, and relations between the parent and child by adoption, shall, thereafter, in all respects, including the right of inheritance, be the same that exists by law between parent and child by lawful birth.

The adopted child does not lose the right to inherit from its natural parents; where a father adopted the child of his deceased daughter, held,

that such child would inherit from him as his own child and also take the share of its deceased mother: *Wagner v. Varner*, 50-532.

Maltreatment
of child : conse-
quences of
R. & 2604.

SEC. 2311 In case of maltreatment committed or allowed by the adopted parent, or palpable neglect of duty on his part toward such child, the custody thereof may be taken from him and entrusted to another at his expense, if so ordered by the circuit court of the county where the parent resides, and the same proceedings may be had therefor, so far as applicable, as are authorized by law in such a case in the relation of master and apprentice; or the court may, on showing of the facts, require from the adopted parent, bond with security, in a sum to be fixed by him, the county being the obligee, and for the benefit of the child, conditioned for the proper treatment and performance of duty toward the child on the part of the parent; but no action of the court in the premises shall affect or diminish the acquired right of inheritance on the part of the child, to the extent of such right in a natural child of lawful birth.

HOMES FOR THE FRIENDLESS.

[Seventeenth General Assembly, Chapter 176.]

Shall have
authority to
receive and
dispose of
minors.

SEC. 1. Any home for the friend less, incorporated under the laws of this state, shall have authority to receive, control and dispose of minor children, under the following provisions: In case of the death or legal incapacity of a father, or in case of his abandoning or neglecting to provide for his children, the mother shall be considered their legal guardian for the purpose of making surrender of them to the charge and custody of such corporation; and in all cases where the person or persons legally authorized to act as the guardian or guardians of any child, are not known, the mayor of the town or city where such "home" is located, may, in his discretion, surrender such child to said "home."

If parents are
drinkards,
etc., etc.

SEC. 2. In case it shall be shown to any judge of a court of record, or to the mayor, or to any justice of the peace within such city or town, that the father of any child is dead, or has abandoned his family, or is an habitual drunkard, or imprisoned for crime, and the mother of such child is an habitual drunkard, or is in prison for crime, or is an inmate of a house of ill-fame, or is dead, or has abandoned her family, or that the parents of any child have abandoned or neglected to provide for it, then such judge, mayor or justice of the peace may, if he thinks the welfare of the child requires it, surrender such child to said "home."

Upon com-
plaint child
may be sent
to "home."

SEC. 3. Whenever complaint shall be made to the judge of any court of record, or to the mayor, or any justice of the peace in the city or town where said "home" is located, that any girl under the age of fourteen years or boy under the age of twelve years is abandoned by, or is sustaining relations to his or her parents or guardians, mentioned or contemplated in section two hereof, it shall be the duty of such judge, mayor or justice to issue a warrant for the arrest of such child, and if on testimony satisfactory to said judge, mayor or justice, it shall appear that such child has no parents, or is abandoned by its parents or guardians, as contemplated in section two of this act, the said mayor, judge or justice may, if he believes the best interest of the child requires it, surrender such child to the care of said "home."

The right of appeal, within twenty days, to the district or circuit court, from the judgment of any mayor or justice of the peace shall be secured; and in any hearing before a court of record the party charged may have a trial by jury as is provided by law.

SEC. 4. Upon the hearing of any *habeas corpus* for the custody ^{Habeas corpus.} of any child, if it appears that such child has been surrendered to said "home," under the provisions of this act, such surrender shall be taken by all courts of justice as presumptive that such child was legally and properly surrendered to said "home," and that said "home" was entitled to the custody and guardianship of such child under the provisions of this act.

SEC. 5. Such home for the friendless shall be the legal guardian ^{"Home" shall be legal guardian.} of the persons of all children that shall be surrendered to it under the provisions of this act, and shall have and exercise all the right and authority of the parents of such children, under the provisions of chapter six and seven, title fifteen of the code of ^{Code, title 15,} Iowa, and amendments thereto, regulating the apprenticing and ^{chapters 6 and 7.} adoption of children.

SEC. 6. If religious instruction is given any child while an ^{Religious instruction.} inmate of such home, it shall be in the religious faith of the parents of such child, if the same be known; and when any home shall dispose of the custody of any child, it shall be to some person and of the same religious faith as its parents, unless the parent or former guardian consent otherw'se.

TITLE XVI.

OF THE ESTATES OF DECEDENTS.

CHAPTER 1.

OF PROBATE JURISDICTION.

SECTION 2312. The circuit court of each county shall have original and exclusive jurisdiction of the probate of wills, and the appointment of such executors, administrators, or trustees, as may be required to carry the same into effect; of the settlement of the estate of deceased persons, and of the persons and estates of minors, insane persons, and others requiring guardianship, including applications for the sale of real property belonging to any such estates, except as prescribed in chapters one and three, of title fifteen.

Circuit court
has exclusive.
12 G. A. ch. 86,
§ 3.
13 G. A. ch. 153,
§ 4.

This section only gives the circuit court exclusive jurisdiction in an action to probate the will. Such probate is not conclusive on adverse parties, and an original action to set the will aside may be instituted and the district court will have jurisdiction in such action: *Leighton v. Orr*, 44-679, 683.

The circuit court does not have exclusive jurisdiction in a suit on an administrator's bond: *Wheelhouse v. Bryant* 13-160; *Jenkins v. Sheilds*, 36-526.

This section does not defeat or oust the general equity jurisdiction of the district court: *Harlin v. Stevenson*, 30-371.

The jurisdiction here conferred in relation to estates of insane persons does not exclude that of the district court in an action of right between an insane person and others: *Flock v. Wyatt*, 49-466.

The court having taken jurisdiction to appoint an administrator, such action cannot be attacked collaterally by showing that there was no property in the county to warrant such appointment: *Murphy v. Creighton*, 45-179.

The proceedings in probate cannot be tried *de novo* in the supreme court: *Ross v. McQuiston*, 45-145; *Sisters, etc., v. Glass*, 45-154.

An order of a probate court approving the report of an administrator in which he certifies to a distribution of all the funds to certain heirs, is not an adjudication that there are no other heirs: *Crosley v. Calhoon*, 45-557.

The jurisdiction of the circuit court in the matter of allowing claims against the estate is not exclusive: See notes to § 2408.

Always open:
exception.
12 G. A. ch. 86,
§ 12.

Same: notice.
Same.

Clerk: power
in vacation.
Same.

SEC. 2313. The court shall be always open for the transaction of probate business; but the hearing of any matter requiring notice shall be had only in term time, or at such time and place as the judge may appoint.

SEC. 2314. When the judge fixes a time and place of hearing, as contemplated in the preceding section, he shall determine what notice shall be given thereof, and no such hearing shall be had until proof is made of the giving of such notice.

SEC. 2315. The clerk, in vacation, shall have power to appoint executors, administrators, guardians, and appraisers; to issue cita-

tions and other notices, and to discharge such other duties in relation to estates of decedents as are in this title specially devolved on him.

[As amended by 15th G. A., ch. 43, which inserted the word "guardians."]

SEC. 2316. Any act of the clerk, as contemplated in the preceding section, shall be binding on all parties interested therein until the next term of the court after they are entered of record, when they shall be read in open court and approved, set aside, or modified, but until so set aside or modified, it shall have the same force and effect as if done by the court.

SEC. 2317. Where the judge is a party, or connected by blood or affinity with any person so interested nearer than the fourth degree, or is personally interested in any probate matter, he shall order the same transferred to the district court, which shall have jurisdiction there'n the same as the circuit court would otherwise have, and its proceedings shall be entered on the records of the circuit court.

SEC. 2318. When a case is originally within the jurisdiction of the courts of two or more counties, that court which first takes cognizance thereof by the commencement of proceedings, shall retain the same throughout.

SEC. 2319. The court of the county in which a will is probated, or in which administration is granted, shall have jurisdiction co-extensive with the state in the settlement of the estate of the decedent and the sale and distribution of his real estate.

[The word "real" in the last line is not in the original, but is in the code as reported by the commissioners, and is therefore retained as in the printed code, being probably an omission in the original supplied by the editor.]

SEC. 2320. Any process or authority emanating from the court in probate matters, may, for good cause, be revoked and a new one issued.

SEC. 2321. All bonds relating to probate matters shall be filed in the office of the clerk of the circuit court, and shall not be deemed sufficient until examined by the clerk and his approval endorsed thereon.

CHAPTER 2.

OF WILLS AND LETTERS OF ADMINISTRATION.

SECTION 2322. Any person of full age and sound mind may dispose, by will, of all his property except what is sufficient to pay his debts, or what is allowed as a homestead, or otherwise given by law as privileged property to his wife and family.

The provisions as to "privileged property" here referred to are those found in §§ 2371 and 2419. By this expression, dower is not intended. Aside from these limitations the testator may dispose of all his personal property free from any claim of the wife: *In the matter of the estate of Davis, 36-24.*

SEC. 2323. Property to be subsequently acquired, may be devised when the intention is clear and explicit.

Subsequent property.
R. § 2310.
C. 51, § 1278.

Verbal wills.
R. § 2311.
C. '51, § 1279.

SEC. 2324. Personal property to the value of three hundred dollars may be bequeathed by a verbal will, if witnessed by two competent witnesses.

[The word "if" in the second line, as in the original is "it" in the printed code.]

While a verbal will is not valid as to real property or personal property in excess of \$400 it may be carried out as to the personal property to that limit: *Mulligan v. Leonard*, 46-692. But where it was sought by verbal will to dispose of a promissory note of the value of \$400, held, that such will was invalid, not only as to

the excess bat as to the whole: *Stricker v. Oldenburgh*, 39-653.

It need not appear that the witnesses were expressly called on by decedent to attest his will: *Mulligan v. Leonard*, 46-692, 695; and the *animus testandi* may be presumed: *Ibid.*, 693.

Soldier or mariner.
R. § 2312.
C. '51, § 1280.

In writing.
R. § 2113.
C. '51, § 1281.

SEC. 2325. A soldier in actual service, or a mariner at sea, may dispose of all his personal estate by a will so made and witnessed.

SEC. 2326. All other wills, to be valid, must be in writing, witnessed by two competent witnesses and signed by the testator, or by some person in his presence and by his express direction.

"Witnessed by two competent witnesses" means that such witnesses must subscribe the will. It is not sufficient to prove the will by witnesses who were present but did not subscribe it: *In the matter, etc., of Boyer Boyeus*, 23-354.

It is not necessary that the testator should state to the witnesses the character and purpose of the instrument which he causes them to witness:

In the matter of the will of Hulse, 52-662; nor that they be known to have been requested by the testator to attest his will: *Mulligan v. Leonard*, 46-692; nor is it necessary that they should see the testator subscribe the will. If the signature be adopted or acknowledged in their presence it is sufficient: *In the matter of the will of Conrey*, 52-197.

Witness.
R. § 2314.
C. '51, § 1282.

Same.
R. § 2315.
C. '51, § 1283.

Revocation.
R. § 2320.
C. '51, § 1288.

SEC. 2327. No subscribing witness to any will can derive any benefit therefrom, unless there be two disinterested and competent witnesses to the same.

SEC. 2328. But if, without a will, he would be entitled to any portion of the testator's estate, he may still receive such portion to the extent in value of the amount devised.

SEC. 2329. Wills can be revoked, in whole or in part, only by being cancelled or destroyed by the act or direction of the testator with the intention of so revoking them, or by the execution of subsequent wills.

The birth of a child after the execution of a will and prior to the death of the decedent, will operate as an implied revocation thereof: *McCullum v. McKenzie*, 26-510; *Negus v.*

Negus, 46-437; *Fallon v. Chidester*, 46-588; and such revocation cannot be rebutted by proof of a parol re-publication: *Carey v. Baughn*, 36-540.

Cancellation:
how done.
R. § 2321.
C. '51, § 1289.
Deposit of.
R. § 2322.
C. '51, § 1290.

SEC. 2330. When done by cancellation, the revocation must be witnessed in the same manner as the making of a new will.

SEC. 2331. Wills, duly sealed up and endorsed, may be deposited with the clerk of the court, who shall file and preserve the same until the death of the testator, unless he sooner demand them.

SEC. 2332. If no executors are named in the will, one or more may be appointed to carry it into effect.

If an executor is named in the will, appointed to supersede him: *Picker-13 G. A. ch. 158,* a general administrator should not be *ing v. Neiting*, 47-242.

SEC. 2333. If no executors are named therein, or if the executors named fail to qualify and act, it shall be retained until an executor is appointed and qualified in the manner herein prescribed.

If no executors.
R. § 2331.
C. '51, § 1299.

POSTHUMOUS CHILDREN—DEVISEE.

SEC. 2334. Posthumous children unprovided for by the father's will, shall inherit the same interest as though no will had been made.

Posthumous Children.
R. § 316.
C. '51, § 1284.

Birth of a child after execution of testator acts as an implied revocation and prior to the death of the testator: See note to § 2329.

SEC. 2335. The amount thus allowed to a posthumous child, as well as that of any other claim which it becomes necessary to satisfy, in disregard of or in opposition to the contemplation of the will, must be taken ratably from the interests of heirs, devisees, and legatees.

SEC. 2336. The word "devisee" as used in this title, shall, when applicable, be construed to embrace "legatees," and the word "devised" shall, in like cases, be understood as comprising the force of the word "bequeathed."

SEC. 2337. If a devisee die before the testator, his heirs shall inherit the amount so devised to him unless from the terms of the will a contrary intent is manifest.

The widow of a deceased husband | death of the husband; (following the cannot inherit property devised by cases cited in notes to § 2454): Will him to a child who died before the of *Oterdieck*, 50-244.

CUSTODIAN—PROBATE.

SEC. 2338. Any person having the custody of a will, shall, as soon as he is informed of the death of the testator, file the same with the clerk, who shall open and read the same.

To file will.
R. § 2323.
C. '51, § 1291.
13 G. A. ch. 158,
§ 3.

SEC. 2339. If any person having the custody of a will fail to produce the same as required by the preceding section after receiving a reasonable notice so to do, the court may commit him to jail until he produce the same; and he shall be liable for all damages occasioned by his failure to produce such will.

14 G. A. ch. 71.
Penalty for refusal.
R. § 2324.
C. '51, § 1292.

SEC. 2340. After the will is produced and read, a day shall be fixed by the court or clerk for proving the same, which day shall be during a term of court, and may be postponed from time to time in the discretion of the court. Whenever the proving of a will is contested, either party shall be entitled to demand a jury trial and to the verdict of a jury on the issues involved.

Probate.
R. § 2325.
C. '51, § 1293.
13 G. A. ch. 158,
§ 4.

[As amended by 16th G. A. ch. 11, which added the provision as to jury trial.]

Before the section was amended, | Appeal from proceedings in probate held, that in a proceeding to probate a will, a jury trial could not be demanded: *Gilruth v. Gilruth*, 40-346.

§ 2312.

SEC. 2341. The clerk shall give notice of the time thus fixed by publishing a notice, signed by himself and addressed to all whom it may concern, in a daily or weekly newspaper printed in the

Notice of hearing.
R. § 2326.
C. '51, § 1294.
13 G. A. ch. 158,
§ 5.

county where the will is filed, for three consecutive weeks, the last publication of which shall be at least ten days before the time fixed for such hearing; but the court in its discretion may prescribe a different kind of notice.

The notice here prescribed is all of publication thereof may be made that is required, and is binding upon infants as well as adults, and proof as provided in § 3697: *Farrell v. Leighton*, 49-174.

Certificate: evidence.
R. § 2332.
C. § 51, § 1300.

SEC. 2342. Wills, when proved and allowed, shall have a certificate thereof endorsed on or annexed thereto, signed by the clerk and attested by the seal of the court; and every will so certified, or the record thereof, or the transcript of such record duly authenticated, may be read in evidence in all courts without further proof.

The probate of a will does not determine its testamentary character and give validity to a title based thereon, but its effect and interpretation are matters for adjudication when rights arise thereunder: *Ful-lon v. Chidester*, 46-588.

Although the certificate fails to show a compliance with all the directory provisions of the statute in regard to the probate of wills, yet it will entitle the will to be read in evidence: *Latham v. Latham*, 30-294.

Recorded.
R. § 2337.
C. § 51, § 1295.

SEC. 2343. After being approved and allowed, the will, together with the certificate hereinafter required, shall be recorded in a book kept for that purpose.

Executor, to have copy.
R. § 2330.
C. § 51, § 1298.

SEC. 2344. When proved and recorded, the court shall direct the will, or an authenticated copy thereof, to be placed in the hands of the executor therein named or otherwise appointed.

EXECUTORS—TRUSTEES.

Married women.
R. § 2336.
C. § 51, § 1304.

Minors.
R. § 2337.
C. § 51, § 1305.

SEC. 2345. A married woman may act as executor independent of her husband.

SEC. 2346. If a minor under eighteen years of age is appointed an executor, there is a temporary vacancy as to him until he reaches that age.

Vacancies.
R. § 2335.
C. § 51, § 1303.
13 G. A. ch. 158, § 8.

SEC. 2347. If a person appointed executor refuses to accept the trust, or neglects to appear within ten days after his appointment and give bond as hereinafter prescribed, or if an executor remove his residence from the state, a vacancy will be deemed to have occurred.

An executor may surrender his trust by resignation, and after a reasonable time for filling his place he will be released from the duty of participating in the settlement of the estate without any formal order accepting such resignation, and a service of notice upon him thereafter as executor will not be good: *U. S. Rolling Stock Co. v. Potter*, 42-56.

How filled:
R. § 2339.
C. § 51, § 1307.
13 G. A. ch. 158, § 9.

SEC. 2348. In case of a vacancy, letters of administration, with the will annexed, may be granted to some other person; or if there be another executor competent to act, he may be allowed to proceed by himself in administering the estate.

In case of a vacancy by resignation the person appointed succeeds to the duties and obligations as well as the powers of the first executor, and can discharge such duties and obligations without delay or interruption: *Shawhan v. Loffer*, 24-217.

Substitution.
R. § 2340.
C. § 51, § 1308.

SEC. 2349. The substitution of other executors shall occasion no delay in the administration of the estate. The periods herein-

after mentioned within which acts are to be performed after the appointment of executors, shall all, unless otherwise declared, be reckoned from the issuing of the commission to the first general executor.

SEC. 2350. Trustees appointed by will, or by the court, must qualify and give bonds the same as executors, and shall be subject to control or removal by the court in the same manner.

FOREIGN WILLS.

SEC. 2351. Wills probated in any other state or country, shall be admitted to probate in this state without the notices required by law in the case of domestic wills, on the production of a copy or such will and of the original record of probate thereof, authenticated by the attestation of the clerk of the court in which such probation was made; or, if there be no clerk, by the attestation of the judge thereof, and by the seal of office of such officers, if they have a seal.

The probate court having adjudicated the sufficiency of the authentication on the copy presented to it for probate, such adjudication cannot be questioned collaterally when the will is offered in evidence, (See § 2353): *Stanley v. Morse*, 26-454.

SEC. 2352. All provisions of law relating to the carrying into effect of domestic wills after probate, shall, so far as applicable, apply to foreign wills admitted to probate in this state as contemplated in the preceding section; *provided*, that where by any will, first admitted to probate in any other state or country and then admitted to probate in Iowa, the executors or trustees under said will are empowered to sell and convey real estate; then upon production of and recording in the proper probate record a copy of the original record of the appointment, qualification and giving bond, unless such bond was waived in the will, of such executors or trustees by the foreign court granting the original probate of the will, duly authenticated in the same manner as foreign wills are required to be; then in conformity with the power granted in such wills, such executors or trustees may sell and convey real estate within any county in this state where such probate of will and proof of qualification may be so of record, without further qualifying in this state, and without reporting such sale to the circuit courts in this state for approval; and such sales and conveyances shall have the same force and validity as if made by executors and trustees duly qualified within this state and reported to and approved by the circuit courts; unless at the time of the execution and delivery of said deed, letters testamentary or of administration upon the estate of such decedent shall have been granted in this state and remain in force and unrevoked, and due notice of such letters be given in such county in this state, if other than the one in which such letters were originally granted here, as required by section twenty-six hundred and twenty-nine of the code, in reference to actions affecting real estate; in which case any conveyance made shall be subject to all the rights acquired under the appointment and letters granted in Iowa; *provided* that no such conveyance shall

be made by such executor or trustee until three months after the recording of a duly authenticated copy of the will, original of appointment, qualification and bonds (unless bond was waived in the will), in the proper probate record of the county where the land is situated.

[As amended by 18th G. A. ch. 162, § 1, adding all after the word "provided" where it first occurs; § 2 of the same act is as follows:]

Legalizing clause.

SEC. 2. All conveyances heretofore made by foreign executors or trustees in which the requirements of this act have been complied with, or in which such proof of authority at the date of conveyance shall be hereafter made of record as provided in section one of this act, are hereby declared to be legal and valid in law and equity from the date of such deed; *provided*, that the provisions of this section shall in no manner affect adverse rights vested since date of such conveyance and prior to the taking effect of this act, or the performing the additional requirements of this section.

Under the ancillary administration, claims against that estate in full, unless it is made to appear that the principal estate is insolvent: *Miner v. Austin*, 45-221.

claims filed under the principal administration may be proved, and if the ancillary estate is solvent the administrator may proceed to pay the

SEC. 2353. Wills, foreign or domestic, shall not be carried into effect until admitted to probate as hereinbefore provided, and must be such probate shall be conclusive as to the due execution thereof, R. § 2329. until set aside by an original or appellate proceeding.

C. '51, § 1297. 13 G. A. ch. 158. An original action may be brought | will notwithstanding the same is duly in the district court to set aside a | probated: *Leighton v. Orr*, 44-679.

ADMINISTRATION.

SEC. 2354. In other cases where an executor is not appointed by will, administration shall be granted:

who entitled: order of:
R. § 2343.
C. '51, § 1311.

1. To the wife of the deceased;
2. To his next of kin;
3. To his creditors;
4. To any other person whom the court may select.

The fact that there was an agreement of separation between husband and wife will not deprive the latter of her preference in the matter of administering on the estate of her deceased husband: *Read v. Howe*, 13-50.

SEC. 2355. Individuals belonging to the same or different classes united. classes, may be united as administrators whenever such course is deemed expedient.

R. § 2344.
C. '51, § 1312.

An appointment of an additional administrator (even against the objection of the one first appointed) will not be disturbed on appeal unless an abuse of the discretion of the court in such matters can be shown: *Read v. Howe*, 13-50.

Time allowed each class.
R. § 2345.
C. '51, § 1313.

SEC. 2356. To each of the above classes in succession, a period of twenty days, commencing with the burial of the deceased, is allowed within which to apply for administration upon the estate.

SEC. 2357. When from any cause general administration cannot be immediately granted, one or more special administrators may be appointed to collect and preserve the property of the deceased.

Special administrators.

R. § 2352.

C. '51, § 1320.

13 G. A. ch. 158,

§ 13.

The court has no authority to order sale would be without jurisdiction a sale of real estate upon the petition and absolutely void: *Long v. Bur-* of a special administrator, and such *nett*, 13-28.

SEC. 2358. No appeal from the appointment of such special executors, shall prevent their proceeding in the discharge of their duties.

Appeal.

R. § 2353.

C. '51, § 1321.

SEC. 2359. They shall make and file an inventory of the property of the deceased, in the same manner in all respects as is required of general executors or administrators, and shall preserve such property from injury.

Inventory.

R. § 2354.

C. '51, § 1322.

SEC. 2360. For this purpose they may do all needful acts under the direction of the court, but shall take no steps in relation to the allowance of claims against the estate.

Duties.

R. § 2355.

C. '51, § 1323.

A special administrator does not represent the estate in such manner that the statute of limitations will commence to run against claims from the time of his appointment: *Pickering v. Weiting*, 47-242.

A special administrator may be substituted as plaintiff in a suit pending in behalf of the deceased, and may prosecute the same: *Musterson v. Brown*, 51-442.

SEC. 2361. Upon the granting of full administration, the powers of the special administrators shall cease, and all the business shall be transferred to the general executor or administrator.

Special; when Powers cease.

R. § 2356.

C. '51, § 1324.

SEC. 2362. Every executor or administrator, except as herein otherwise declared, before entering on the discharge of his duty, must give bond in such penalty as may be required, to be approved by the clerk, conditioned for the faithful discharge of the duties imposed on him by law, according to the best of his ability.

Bond of.

R. § 2348.

C. '51, § 1316.

13 G. A. ch. 158,

§ 10.

SEC. 2363. He must also take and subscribe an oath, the same in substance as the condition of the bond aforesaid; which oath and bond must be filed with the clerk.

Oath of.

R. § 2349.

C. '51, § 1317.

13 G. A. ch. 158,

§ 11.

SEC. 2364. New bonds may be required by the court to be given, and in a new penalty and with new sureties whenever the same is deemed expedient.

New bonds.

R. § 2350.

C. '51, § 1318.

SEC. 2365. After the filing of the bond aforesaid, the clerk shall issue letters testamentary or of administration, as the case may be, under the seal of the court, giving the executor or administrator the power authorized by law.

Letters.

R. § 2351.

C. '51, § 1319.

13 G. A. ch. 158,

§ 12.

If the clerk issue letters giving by law, such excessive power is void: *Pickering v. Weiting*, 47-242.

SEC. 2366. The executors or administrators first appointed and qualified for the settlement of an estate, shall, within ten days after the receipt of their letters, publish such notice of their appointment as the court or the clerk may direct; which direction shall be endorsed on the letters when issued.

To give notice of appoint-

ments.

R. § 2389, 2390.

C. '51, § 1357.

13 G. A. ch. 158,

§ 18.

Special administrators are not intended to be included herein, and, need not give notice: *Pickering v. Weiting*, 47-242.

SEC. 2367. Administration shall not be originally granted after the lapse of five years from the death of the decedent, or from the time his death was known in case he died out of the state.

Limitation.

R. § 2357.

C. '51, § 1325.

13 G. A. ch. 158.

An administrator *de bonis non* may be appointed after the lapse of five years from the death of decedent. This section refers to the first assumption of management of the estate by the probate court in the appointment of the first administrator: *Crossan v. McCrary*, 37-684.

Ancillary administration in this state may be granted after the expiration of five years to an administrator appointed in another state as provided in the next section: *Woodruff v. Schultz*, 49-430; *Dolton v. Nelson*, 3 Dillon (U. S. C. C.) 469.

The failure to take out letters of administration until the period specified has expired, does not operate to vest title to personal property in the heirs, but after the expiration of

this period equity might under proper circumstances afford relief to them or to a creditor having an unpaid claim: *Haines v. Harris*, 33-516; and in such a case, *held* that the heirs might maintain action for the collection of a promissory note due the estate: *Phinny v. Warren*, 52-332.

A judgment creditor who has failed to have administration granted within the time specified cannot afterwards maintain an action to revive his judgment against the heirs or others holding property which belonged to such decedent. Whether any equitable circumstance would warrant the granting of original administration after the expiration of five years, *quere*: *Bridgman v. Miller*, 53-392.

Administration; when granted in other states.
R. § 2341.
C. '51, § 1309.

SEC. 2368. If administration of the estate of a deceased non-resident has been granted in accordance with the laws of the state or country where he resided at the time of his death, the person to whom it has been committed, may, upon his application, and upon qualifying himself in the same manner as is required of other executors, be appointed to administer upon the property of the deceased in this state, unless another has been previously appointed.

A foreign administrator cannot sue in our courts without taking out letters of administration: *McClure v. Bates*, 12-77; *Carrick v. Pratt's Ex'rs*, 4 Gr. 144.

The appointment of an administrator in another state will be presumed to be regular: *Woodruff v. Schultz*, 49-430.

Same.
R. § 2342.
C. '51, § 1310.

SEC. 2369. The original letters, or other authority, conferring his power upon such executor, or an attested copy thereof, must be filed with the clerk of the proper court before such appointment can be made.

CHAPTER 3.

OF THE SETTLEMENT OF THE ESTATE.

Inventory.
R. § 2360.
C. '51, § 1328.
13 G. A. ch. 158,
§ 14.

SECTION 2370. Within fifteen days after his appointment, the executor shall make and file with the clerk an inventory of all the personal effects of the deceased of every description which have come to his knowledge, and a list of all book accounts which appear by the books or papers of the deceased to be unsettled. Such inventory shall be so made out as to show separately and distinctly, each by itself, the property inventoried as general assets of the deceased; the property inventoried and which is regarded as exempt under the next two sections; and the book accounts.

The old common law rule that a debtor who has been made executor of his creditor's estate is released from his debt, when it does not appear that the assets of the estate are insufficient to pay the debts, is not in

force; but where there is a person other than the executor authorized to collect the debts of the estate, a suit or judgment against the executor for a debt due by him to the estate should be against him individually and not as executor: *Kaster v. Pierson*, 27-90.

SEC. 2371. When the deceased leaves a widow, all personal property which in his hands as the head of a family would be exempt from execution, after being inventoried and appraised, shall be set apart to her as her property in her own right, and be exempt in her hands as in the hands of the decedent. When not assets.
R. § 2361.
C. '51, § 1329.

It is not provided that the property of the wife, exempt in her hands, shall upon her death vest in the husband. The clause of § 2440, making provisions as to the widow of deceased husband applicable to husband of deceased wife, applies only to the provisions in that chapter which relate exclusively to real estate. All personal property of the wife at her death goes into the hands of the administrator for distribution: *Wilson v. Breeling*, 50-629.

The appraisement here provided for is to preserve evidence of the value of the property, should any question arise as to its exemption: *Code*

Com'r's Rep.

Under § 2361 of the Rev., which did not give such property absolutely to the widow, but provided that it should remain in her possession until disposed of as provided by law, it was held that she could not sell such property and receive the proceeds for her own use: *Meyer v. Meyer*, 28-359, 377; and that when such property was no longer needed by the widow it did not become liable to administration or to be taken to pay debts, but was to be distributed according to law: *Ellsworth v. Ellsworth*, 33-164, and cases there cited.

SEC. 2372. The avails of any life insurance, or any other sum of money made payable by any mutual or benevolent society upon the death of a member of such society, are not subject to the debts of the deceased, except by special contract or arrangement, but shall, in other respects, be disposed of like other property left by the deceased. Life insurance.
R. § 2362.
C. '51, § 1330.

[As amended, so as to make it applicable in case of mutual or benevolent societies: 18th G. A., ch. 5.]

As to the distribution of the proceeds of a policy of insurance, see § 1182 and notes.

The facts in a particular case held

not sufficient to establish an agreement that the avails of life insurance should be subject to a debt: *Herriman v. McKee*, 49-185.

SEC. 2373. All property inventoried by the executor shall be appraised by three appraisers, who shall be appointed immediately on the filing of the inventory. Appraisement.
R. § 2363.
C. '51, § 1231.

SEC. 2374. The clerk shall issue to them a notification of their appointment, accompanied by a copy of the inventory as returned by the executor, and in making their appraisement they shall affix a value to each item of property, separately, as it appears in such inventory.

SEC. 2375. The court shall, if necessary, set off to the widow, and children under fifteen years of age, of the decedent, or to either, sufficient of his property, of such kind as it shall deem appropriate, to support them for twelve months from the time of his death. Allowance to widow and children.
R. § 2370.
C. '51, § 1338.
9 G. A. ch. 22, § 1.

SEC. 2376. A supplemental inventory must be made in like manner, whenever the existence of additional property is discovered. Supplemental inventory.
R. § 2365.
C. '51, § 1333.

SEC. 2377. The court may, on the petition of the widow, or other person interested, review the allowance so made to the

Allowance reviewed.
9 G. A. ch. 22, § 4.

widow or children, and increase or diminish the same, and make such order in the premises as it shall deem right and proper.

Property in another county.
R. § 2364.
C. 51, § 1332.

Discovery of assets: proceedings.
R. § 2366.
C. 51, § 1334.

SEC. 2378. If any portion of the decedent's personal property be in another county, the same appraisers may serve, or others may be appointed.

SEC. 2379. The court or judge may require any person suspected of having taken wrongful possession of any of the effects of the deceased, or of having had such effects under his control, to appear and submit to an examination under oath touching such matters; and if on such examination it appear that he has the wrongful possession of any such property, the court or judge may order the delivery of the same to the executor of the estate.

The court is not given general jurisdiction for the discovery of assets. It may not determine the question as an issue of fact upon general evidence whether the person has taken wrongful possession, but its order must be based on the examination of the defendant himself, and such order can only be made after having obtained jurisdiction of the defendant's person by his presence in court: *Rickman v. Stanton*, 32-134.

In this proceeding the parties are not to be heard as upon a trial, and

other evidence than that of the party summoned is not to be introduced. The objection that the adverse party in such proceeding is an executor (see § 3639), cannot be urged against a person thus required to submit to an examination: *Smyth v. Smyth*, 24-491.

An administrator *de son tort* is liable under § 2484 at the suit of a creditor, and the remedy by this section, which is only in favor of an administrator, need not be pursued: *Madison v. Shockley*, 41-451.

Same.
R. § 2367.
C. 51, § 1335.

SEC. 2380. If, on being duly served with the order of the court or judge requiring him to do so, any person fail to appear in accordance with such order; or if, having appeared, he refuse to answer any question which the court or judge deem proper to be put to him in the course of such examination; or if he fail to comply with the order of the court or judge requiring him to deliver the property to the executor, he may be committed to the jail of the county until a compliance be yielded.

[The words between "examination" in the fifth line, and "he may" etc., in the seventh line, are not found in the original, but they are in the code as reported by the commissioners and are here retained as in the printed code, having probably been inserted by the editor to supply a clerical omission.]

Same.

SEC. 2381. Whenever it is probable that the known and acknowledged property of the deceased will not be sufficient for the payment of his debts, any person to whom the legal title of any real estate was conveyed by the decedent or any person through whom the legal title to any real estate conveyed by the decedent has subsequently passed, or any person claiming an interest in any such real estate, may be required to appear and submit to an examination as contemplated in the preceding sections, subject to the penalties therein prescribed; and the court or judge shall have full power to order the proper declaration of trust to secure the estate, to be made by any person who may appear on such examination to hold the legal title to any real estate which in the event of the insufficiency of the personal property would be assets for the payment of debts, and to enforce compliance with such order as is provided in the next preceding section.

May compound.
R. § 2368.
C. 51, § 1336.

SEC. 2382. The executor, with the approbation of the court, may compound with any debtor of the estate who may be thought unable to pay his whole debt.

SEC. 2383. The interest of a deceased mortgagee shall be included among his personal assets, and, upon its being paid off, satisfaction shall be entered by the executor.

Mortgage assets.
R. § 2369.
C. 51, § 1387.

SEC. 2384. When a person by his will makes such a disposition of his effects as to prejudice the rights of creditors, the will may be sustained by giving security to the satisfaction of the court for the payment of the claims of the creditors to the extent of the value of the property devised.

Creditors: will sustained.
R. § 2371.
C. 51, § 1339.

SEC. 2385. When no different direction is given in the will, debts due the estate, shall, as far as practicable, be collected, and the debts owing by the estate paid off therewith to the extent of the means thus obtained.

Funds collected; paid out.
R. § 2372.
C. 51, § 1340.

SALE OF PROPERTY.

SEC. 2386. The court, on the application of the executor, shall, from time to time, direct the sale of such portion of the personal effects as are of a perishable nature, or which, from any cause, would otherwise be likely to depreciate in value, and also such portions as are necessary to pay off the debts and charges upon the estate.

Personal.
R. § 2373.
C. 51, § 1341.

Debts should be paid out of the personal estate alone unless otherwise directed by the will, although the will

leaves the personal property all to one party as a bequest: *McGuire v. Brown*, 41-650.

SEC. 2387. If the personal effects are found inadequate to satisfy such debts and charges, a sufficient portion of the real estate may be ordered to be sold for that purpose.

Real estate: when ordered sold.
R. § 2374.
C. 51, § 1342.

It is only the interest of the estate in the property owned by decedent, and not the interest vested in the wife under § 2440, which may be subjected to the payment of debts: *Mock v. Watson*, 41-241; but the widow must set up her dower right in this

proceeding: See notes to § 2389.

Similar provisions in R. S., chap. 162, considered: *Little v. Sinnott*, 7-3-4.

A sale of real estate cannot be ordered upon the petition of a special administrator: See note to § 2357.

SEC. 2388. Application for that purpose can be made only after a full statement of all the claims against the estate, and after rendering a full account of the disposition made of the personal estate.

Application.
R. § 2375.
C. 51, § 1343.

Defects in the application will not defeat the jurisdiction of the court, and the validity of proceedings thereunder cannot be attacked collaterally: *Read v. Hance*, 39-553.

§ 2421, which period, however, by Rev. § 2405, under which this case was decided, was a year and a half), and not afterward unless a court of equity should for good reason make an exception: *McCrary v. Tasker*, 41-255.

The fact that the petition does not state all the claims against the estate, will not render the proceedings void: *Myers v. Davis*, 47-325.

An administrator cannot bring action in regard to the title of real estate of decedent unless authorized upon application properly made: *Gladson v. Whitney*, 9-267.

As a general rule, an application for leave to sell real estate should be made within the time limited for the filing and proving of claims (see

SEC. 2389. Before any order to that effect can be made, all persons interested in such real estate shall be served with notice in the same manner as is prescribed for the commencement of

Notice.
R. § 2376.
C. 51, § 1344.
13 G. A. ch. 158,
§ 15.

civil action, unless a different notice is prescribed by the judge.

Where it appears that the court obtained jurisdiction of a minor by service and appearance, *held* that the proceedings were not invalid by reason of no defense being made for such minor: *Bickel v. Erskine*, 43-213.

A party served by publication only, may, in the manner provided in § 2877, have an order of sale, made pursuant to such application and notice, set aside: *Huston v. Huston*, 29-347.

The proceedings under this and the preceding section are *adversary* and not *in rem* merely, and absence of the notice here required renders them absolutely void, (per Beck and Cole, J. J.; Dillon, Ch. J., and Wright, J., not assenting): *Good v. Norley*, 2-188, followed by a united court in *Boyles v. Boyles*, 37-592.

Where it did not appear of record that there was any publication, notice, sale, etc., as here required, *held* that a deed purporting to be made as a result of such proceeding was invalid:

Thornton v. Mulquinne, 12-549.

The fact that the service of notice is defective will not render the judgment void: *Meyers v. Davis*, 47-325.

The question as to what must appear in order to give the court jurisdiction to order a sale, and as to the presumptions in favor of jurisdiction in such proceedings, discussed at length (under the provisions of R. S.): *Morrow v. Weed*, 4-77; and see upon a similar subject, notes to § 228.

A widow properly notified must set up her claim to dower in this proceeding or be thereafter barred from any claim on the property sold in pursuance thereof: *Olmstead v. Blair*, 45-42; and where the widow appeared and resisted the sale, but it was ordered without making any reservation of her dower interest, *held* that she was precluded from subjecting the land so sold to any claim for dower in a subsequent proceeding: *Garcia v. Hatcher*, 39-685.

SEC. 2390. If convenient, the real estate must be divided into parcels, and each appraised in the manner above provided for personal property, and the appraisement filed in like manner.
Sold in parcels:
R. § 2377.
C. 51, § 1345.

Whole may be:
R. § 2378.
C. 51, § 1346.
SEC. 2391. When a part cannot be sold without material prejudice to the general interests of the estate, the court may order the sale of the whole, or of such parts as can be sold advantageously.

In the absence of a contrary showing it will be presumed, in the case of a sale of the whole, that such sale was ordered for good reason: *Couins v. Tool*, 36-82, 86.

This provision is not intended to apply to the wife's one-third interest in the land: *Mock v. Watson*, 41-241.

SEC. 2392. Property may be permitted to be sold at private sale, whenever the court is satisfied that the interests of the estate will be thereby promoted.

SEC. 2393. In other cases, sales must be made at public auction, after giving the same notice as would have been necessary for the sale of such property on execution.

SEC. 2394. No property can be sold at private sale for less than the appraisement price, without the express approbation of the judge.

SEC. 2395. Property may be ordered to be sold on a partial credit of not more than twelve months.

SEC. 2396. Any person interested in the estate, may prevent a sale of the whole or any part thereof, by giving bond to the satisfaction of the court, conditioned that he will pay all demands against the estate, to the extent of the value of the property thus kept from sale, as soon as called upon by the court for that purpose.

SEC. 2397. If the conditions of such bond are broken, the property will still be liable for the debts, unless it has passed into the hands of an innocent purchaser, and the executors may take

Private sale.
R. § 2379.
C. 51, § 1347.

Public.
R. § 2380.
C. 51, § 1348.

Must sell for
appraisement.
R. § 2381.
C. 51, § 1349.

Credit.
R. § 2382.
C. 51, § 1350.

Sale: how pre-
vented.
R. § 2383.
C. 51, § 1351.

Same.
R. § 2384.
C. 51, § 1352.

possession thereof and sell the same under the direction of the court, or they may prosecute the bond, or both at once if the court so direct.

SEC. 2398. If the conditions of the bond are complied with, *same*.
the property passes by devise, distribution, or descent, in the *R. § 2385.*
C. 51, § 1353.
same manner as though there had been no debts against the estate.

SEC. 2399. Where real estate is sold, conveyances thereof, *Conveyances:*
executed by the executor, pass to the purchaser all the interest of *approval of:*
the deceased therein; but such conveyances shall not be valid *R. § 2386.*
until approved by the court. *C. 51, § 1354.*
13 G. A. ch. 158,
§ 16.

SEC. 2400. Such approval shall be entered of record. A certificate thereof must be endorsed on the deed, with the signature of the clerk and the seal of the court affixed thereto; and the deed so endorsed shall be presumptive evidence of the validity of the sale, and of the regularity of all the proceedings connected therewith. *Record of: pre-*
sumpti. n.
R. § 2387.
C. 51, § 1355.
13 G. A. ch. 158,
§ 17.

As to the presumption of regularity, *ton v. Mulquinne*, 12-549.
see *Cocins v. Tool*, 31-82, 86; *Thorn-*

SEC. 2401. No action for the recovery of any real estate *sol l* *Limitation.*
by an executor can be sustained by any person claiming under *R. § 2388.*
the deceased, unless brought within five years next after the sale. *C. 51, § 1356,*

As to whether this section would apply where the proceedings of the court granting leave to sell were absolutely void for want of notice or other cause, the Supreme Court were equally divided: *Good v. Norley*, 28-188; but it was afterwards held by a united court that the limitation would not apply in such cases. *Boyles v.* *Boyles*, 37-592. This section does not bar an action brought to set aside the sale on the ground of fraud within five years after the discovery of such fraud (see § 2530): *Cocins v. Tool*, 31-513.

As to similar provision in regard to sales by guardians, see § 265 and notes.

POSSESSION OF REAL PROPERTY.

SEC. 2402. If there be no heir or devisee present and competent to take possession of the real estate left by such decedent, the executor may take possession of such real estate and demand and receive the rents and profits thereof, and do all other acts relating thereto which may be for the benefit of the persons entitled to such real estate. *When taken by*
executor.
11 G. A. ch. 139,
§ 3.

[The word "devisee" in the first line, as in the original, is "devise" in the printed code.]

The administrator, as such, may, in a proper case, sue for rents, but to justify him in doing so it must be shown that there is no heir or devisee present and competent to take: *Shawhan v. Long*, 26-488.

The possession and control thus given to executors, is a sufficient interest to authorize an action by them to quiet title under § 3273: *Laverty v.*

Sexton, 41-435.

Whether under this section an administrator might bring action for injury to real estate, *quare.* Whatever he may do is as trustee, not simply in his capacity as administrator, and he must aver the facts which authorize him to act: *Kinsell v. Billings*, 35-154.

SEC. 2403. Such executor or administrator, under the order *Proceeds: how*
and direction of the court, may apply the profits of such real *applied.*
Same, § 5.
estate to the payment of taxes and of debts and claims against

the estate of the deceased in case the personal assets are insufficient.

Accounts: compensation. Same, § 4.
SEC. 2404. Such executor or administrator shall account to such heirs or devisees for the rents, profits, or use of such real estate, deducting therefrom the payments made under the preceding section, together with a reasonable compensation for his own services, to be fixed by the court.

When there are minors who have no guardian. Same, § 6.
SEC. 2405. When there are minor heirs for whom no guardian has been appointed, the executor or administrator shall pay out of any assets in his hands, all taxes assessed against the estate not otherwise provided for, and he shall be credited therefor as for the payment of other claims against the estate.

Testator may prescribe manner of settling estate. R. § 2358. C. 51, § 1326.
SEC. 2406. When the interests of creditors will not thereby be prejudiced, a testator may prescribe the entire manner in which his estate shall be administered on; may exempt the executor from the necessity of giving bond, and may prescribe the manner in which his affairs shall be conducted until his estate is finally settled, or until his minor children become of age.

Court may direct any business continued. R. § 2359. C. 51, § 1327.
SEC. 2407. The court, in its discretion, may also authorize an executor or administrator to continue the prosecution of any business in which the deceased was engaged at the time of his death, in order to wind up his affairs with greater advantage; but such authority shall not exempt him from returning a full inventory and appraisement as in other cases.

CLAIMS—PAYMENTS.

Claims stated: sworn to, and filed, and ten days' notice of the hearing thereof, proved; allowance of. R. §§ 2391, 2393. C. 51, §§ 1359, 1361. 13 G. A. ch. 158, § 19.
SEC. 2408. Claims against the estate shall be clearly stated, accompanied by a copy of the claim, shall be served on one of the executors in the manner required for commencing ordinary proceedings, unless the same have been approved by the administrator, in which case they may be allowed by the clerk without said notice.

The stating, etc., of a claim as here provided, is in the nature of a petition and a copy of the written instrument or account upon which it is founded should be attached: *Baker v. Chittuck*, 4 Gr. 480; but a copy is sufficient, the original need not be produced until trial: *Braught v. Griffith*, 16-26.

That the claim is not properly sworn to does not render the filing thereof void: *Goodrich v. Conrad*, 24-254; the provision in that respect is directory, and the oath may be administered after filing: *Wile v. Wright*, 32-451.

If the claim is filed in due time, though not sworn to, it will be sufficient. The omission of the oath will not render the filing void: *McCrary v. Deming*, 38-527.

The executors cannot be held to take notice of the filing of a claim until the notice here provided for is

served: *Ashton v. Miles*, 49-564.

The allowance of a claim by the probate court is not a judgment in such sense as to be barred in ten years under § 2529, ¶ 5. The filing and allowance of the claim are in the nature of the filing of a petition in an action and the action will be considered as pending until the claim is paid or otherwise disposed of: *Smith v. Shachan*, 37-533.

If the claim is such that action thereon may be brought against the administrator in some other court, it need not be first filed, etc., in the probate court as here required: *County of Linn v. Day*, 16-158.

The jurisdiction of the circuit court is not exclusive. After the claim is filed the action may be taken to the district court by consent of parties, and that court will have jurisdiction: *McCrary v. Deming*, 38-5-7. So under Rev. § 2395, which prohibited

the prosecution of claims for a mere money demand in the district court, except with the approbation of the county (probate) court, *held*, that such provision did not deprive the district court of jurisdiction, but was merely an inhibition upon plaintiff, which must be taken advantage of by way of defense, or it would be considered waived, and the district court would have jurisdiction by consent: *Sterritt v. Robinson*, 17-61; *Cooley v. Smith*, 17-99; and under the same section (which is omitted in the Code) it was

held that a matter of equitable nature was originally cognizable in the district court, without leave of the county court: *Waples v. Marsh*, 19-381.

Claims secured by mortgage may be filed and allowed as other claims, but a creditor does not thereby waive his right to subsequently foreclose the mortgage to enforce payment: *Moores v. Ellsworth*, 22-299; and so a judgment may be either filed, or enforced against property upon which it is a lien: See notes to § 2421.

SEC. 2409. All claims filed against the estate shall be entitled in the name of the claimant against the executor, naming him as executor of the estate, naming it; and in all further proceedings on the claim, this title shall be preserved.

Form in which
claim should
be made out.
13 G. A. ch. 158,
§ 19.

See notes to preceding section.

SEC. 2410. All claims filed and not expressly admitted in *Dental* writing, signed by the executor with the approbation of the court, 13 G. A. ch. 158, § 19, shall be considered as denied without any pleading on behalf of the estate.

SEC. 2411. If a claim filed against the estate is not so admitted by the executor, the court may hear and allow the same, or may submit it to a jury; and, on such hearing, unless otherwise provided, all provisions of law applicable to an ordinary proceeding shall apply.

Court may
allow trial by
jury.
R. § 2382, 234.
C. '51, § 1365
13 G. A. ch. 158,
§ 19.

Where the administrator admits the correctness of a claim, whether the court may hear further proof discussed: *Karr v. Stirrers*, 34-123, construing 13 G. A., ch. 158, § 19.

The allowing of a claim by the court is not a judgment against which the statute of limitations will run: See note to § 2408.

SEC. 2412. In matters of accounts of executors, the court shall have authority to appoint one or more referees, who shall have all the powers and perform all the duties of referees appointed by the court in a civil action.

Referees: ex-
amination of
accounts.
13 G. A. ch. 158,
§ 21.

SEC. 2413. Demands, though not yet due, may be presented, proved, and allowed as other claims.

Not due.
R. § 2386.
C. '51, § 1364.

SEC. 2414. Contingent liabilities must also be presented and proved, or the executor shall be under no obligation to make any provision for satisfying them when they may afterwards accrue.

Contingent
liabilities.
R. § 2387.
C. '51, § 1365.

SEC. 2415. Claims against an estate, and counter claims thereto, may, in the discretion of the court, be proved up before one or more referees, to be agreed upon by the parties or approved by the court, and their decision being entered upon the record becomes a decision of the court.

Proved before
referees.
R. § 2388.
C. '51, § 1366.

SEC. 2416. Suits pending against the decedent at the time of his death, may be prosecuted to judgment, his executor being substituted as defendant, and such judgment shall be placed in the catalogue of established claims, but shall not be a lien.

Suits pending.
R. § 2400.
C. '51, § 1368.

SEC. 2417. If either of the executors is interested in favor of a claim against the estate, he shall not serve in any matter connected with that case. And if all the executors are thus interested, the court shall appoint some competent person a temporary executor in relation to such claims.

Executor inter-
ested.
R. § 2401.
C. '51, § 1369.

Expenses of
funeral.
R. § 2402.
C. 51, § 1870.

Allowance to
widow.
R. § 2403.
C. 51, § 1871.
9 G. A. ch. 22,
§ 5.

Other de-
mands:
Order of pay-
ment.
R. § 2404.
C. 51, § 1872.

Limitation.
R. § 2405.
C. 51, § 1873.

SEC. 2418. As soon as the executors are possessed of sufficient means, over and above the expenses of administration, they shall pay off the charges of the last sickness and funeral of deceased.

The homestead is not liable to the last sickness, etc.: *Knox v. Hanlon*, payment of claims for charges of the 48-252.

SEC. 2419. They shall, in the next place, pay any allowance which may be made by the court for the maintenance of the widow and minor children.

SEC. 2420. Other demands against the estate are payable in the following order:

1. Debts entitled to preference under the laws of the United States;
2. Public rates and taxes;
3. Claims filed within six months after the first publication of the notice given by the executors of their appointment;
4. All other debts;
5. Legacies.

The filing of a claim within six months entitles it to precedence in payment although not admitted by the administrator or allowed by the court until after that time has expired: *Chandler v. Hockett*, 12-269; it is the filing which fixes its character as a claim of the third class and gives it precedence over claims filed after the expiration of the six months: *Noble v. Morrey*, 19-5-9; but the filing of the claim is notice to the administrator so as to require him to take account of it in the distribution of the

assets only where he has been notified thereof in the manner contemplated in § 2408: *Ashton v. Miles*, 49-564.

Under Rev., held that a claim upon which action was properly brought in the district court within six months, was entitled to be treated as a claim of the third class upon the filing of the judgment in the county court, although such judgment was not filed for more than eighteen months after administration was granted: *Cooley v. Smith*, 17-99.

SEC. 2421. All claims of the fourth of the above classes not filed and proved within twelve months of the giving of the notice aforesaid, are forever barred, unless the claim is pending in the district or supreme court, or unless peculiar circumstances entitle the claimant to equitable relief.

This section refers to claims sought to be enforced against the personal assets of decedent but not to a claim secured by mortgage, upon which the creditor relies for satisfaction: *Allen v. Moer*, 16-307; and see notes to § 2405; nor does it bar the enforcement of a judgment rendered against decedent in his life-time against property upon which it became a lien: *Baldwin v. Tuttle*, 23-66. In such case the holder may seek payment out of the personal assets by filing his claim as provided in this section, or he may enforce it against property upon which it is a lien without filing it, but if he pursues the latter method, he must enforce it while the lien continues or he will be entirely barred: *Davis v. Shawhan*, 34-91.

Where action on a claim is pending in the district court at the time administration is granted, a failure to

file it as a claim against the estate will not cause it to be barred under this section: *O'Donnell v. Hermann*, 42-60.

The limitation does not apply to claims not existing at the time of decedent's death, but arising thereafter: *Sarery v. Sypher*, 39-615.

Claims of the fourth class are to be both filed and approved within the time limited. Mere filing is not sufficient to prevent a claim being barred: *Noble v. Morrey*, 19-509; *Wilcox v. Jackson*, 51-109. But claims of the third class may be approved after the expiration of the limit here fixed for proving claims of the fourth class: *Goodrich v. Comad*, 24-254.

As to whether a party whose claim is barred is entitled to equitable relief, depends upon the peculiar facts of the case: *Johnson v. Johnson*, 36-608; and peculiar facts held suffi-

cient to entitle to such relief: *Ibid.*, *McCormack v. Cook*, 11-267; *Brayley v. Ross*, 33-505; *Senat v. Findley*, 51-20. But facts held not sufficient: *Preston v. Day*, 19-127; *Shomo v. Bissell*, 20-68; *Davis v. Shawhan*, 34-91.

Equitable relief will not be extended to a party who has been negligent in presenting his claim: *Ferrall v. Irine*, 12-52; *Lacy v. Loughridge*, 51-629.

Where the claim was filed within such time that there was reasonable ground for believing that it would be passed upon within the time limited, *held*, that if not proved up in time, such circumstance would entitle claimant to equitable relief, if the failure did not result from any fault of his: *Wile v. Wright*, 32-451.

Where the holder of a claim at the request of the administrator and on promise of payment, was induced to delay the filing of his claim beyond

the proper time, *held*, that he would be relieved from the bar of the statute: *Burrows v. McLain*, 37-189.

Whether the claim was originally legal or equitable in its nature should make but little difference, if any, in determining what peculiar circumstances are sufficient to excuse the delay in filing: *Brewster v. Kindrick*, 17-479.

As to whether, when the peculiar circumstances are found sufficient to entitle a party to equitable relief, his claim should be admitted to the class to which it would equitably and properly belong, or should under all circumstances be regarded as a fourth class claim, the court was equally divided: *Ibid.*

The limitation begins to run from time of giving notice by general administrator. Notice by special administrator is not intended: *Pickering v. Weiting*, 47-242.

SEC. 2422. After the expiration of the time for filing the claims of the third of the above classes, the executors shall proceed to pay off all claims against the estate in the order above stated, as fast as the means of so doing come into their hands.

SEC. 2423. Claims of the fourth class may be paid off at any time after the expiration of six months aforesaid, without regard to those claims not filed at the time of such payment.

SEC. 2424. No payment can be made to a claimant in any one class until those of a previous class are satisfied.

SEC. 2425. Demands not yet due shall be paid off if the holder will consent to such a rebate of interest as the court thinks reasonable. Otherwise the money to which such claimant would be entitled shall be safely invested until his debt becomes due.

SEC. 2426. Within their respective classes, debts shall be paid off in the order in which they are filed, subject to the provisions of the next section.

SEC. 2427. If there are not likely to be means sufficient to pay off the whole of the debts of any one class, the court shall, from time to time, strike a dividend of the means on hand among all the creditors of that class, and the executors shall pay the several amounts accordingly.

SEC. 2428. The executors may, with the approbation of the court, use funds belonging to the estate to pay off encumbrances upon lands owned by the deceased, or to purchase lands claimed or contracted for by him prior to his death.

SPECIFIC LEGACIES—PAYMENT.

SEC. 2429. Specific legacies of property may, by the court, be turned over to the rightful claimant at any time upon his giving unquestionable real estate security to restore the property, or refund the amount at which it was appraised if wanted for the payment of debts.

Same.
R. § 2414.
C. 51, § 1382.

Same.
R. § 2415.
C. 51, § 1383.

Order when
testator has
given no direc-
tion.
R. § 2416.
C. 51, § 1384.

When paid
ratably.
R. § 2417.
C. 51, § 1385.

Same.
R. § 2418.
C. 51, § 1386.

Executor fail-
ing to pay:
judgment on
bond.
R. § 2419-21.
C. 51, §§ 1387-9.

SEC. 2430. Legacies payable in money, may be paid on like terms whenever the executors possess the means which can be thus used without prejudice to the interest of any claim already filed.

SEC. 2431. After the expiration of the twelve months allowed for the filing claims as above provided, such legacies may be paid off without requiring the security provided for in the preceding two sections, if the means are still retained to pay off all the claims proved or pending as hereinbefore contemplated.

SEC. 2432. If a testator has not prescribed the order in which legacies are to be paid off, and if no security is given as above provided, in order to expedite their time of payment, they may be paid off in the order in which they are given in the will, where the estate is sufficient to pay all.

SEC. 2433. When not incompatible with the manifest intention of the testator, the court may direct all payments of money to legatees to be made ratably.

SEC. 2434. Such must be the mode pursued when there is danger that the estate will prove insufficient to pay off all the legacies, unless security be given to refund as above provided.

SEC. 2435. If the executors fail to make payment of any kind in accordance with the order of the court, any person aggrieved by their failure, may, on ten days' notice to the executors and their sureties, apply to the court for judgment against them on the bond of the executors. The court shall hear the application in a summary manner, and may render judgment against them on the bond for the amount of money directed to be paid and costs, and issue execution against them therefor. If any of the obligors are not served, the same proceedings in relation to them may be had with like effect as in an action by ordinary proceedings under similar circumstances.

A petition alleging a breach of the bond is not necessary in such proceeding: *Hart v. Jewett*, 17-2-4. That a prior order for a *pro rata* payment of the claim has not been made is no defense, though the defendants will only be liable to judgment for such *pro rata* amount as claimant is entitled to: *Ibid.*

In such summary proceedings the sureties cannot set up as a defense that the claim which the administrator fails to pay was allowed by him after it was barred under § 2421, unless fraud or collusion of the administrator is relied on: *Weber v. North*, 51-375.

CHAPTER 4.

OF THE DESCENT AND DISTRIBUTION OF INTESTATE PROPERTY.

Distribution of
personal prop-
erty.
R. § 2422.
C. 51, § 1390.

SECTION 2436. The personal property of the deceased, not necessary for the payment of debts, nor otherwise disposed of as hereinbefore provided, shall be distributed to the same persons and in the same proportion as though it were real estate.

The right to a distributive share vests in the person entitled thereto upon the death of the intestate and not from the time of distribution whether widow or next of kin, *instant-* actually made; and upon the death of

a distributee before distribution is actually made, his share goes to his legal representative or legatee: *Moore v. Gordon*, 24-158.

The ruling in *Burns v. Keas*, 21-257 (see § 2455), as to the share of the surviving husband or wife in the real estate when there are no children, held, applicable also as to the distribution of personal property: *Dodge v. Dodge*, 23-306.

The persons and the proportions here referred to are governed by the rule applicable to real estate, but the character of the title or interest is not so governed. Therefore, held, under a law which made the widow's dower a life estate only, that such widow would nevertheless take an absolute title to her share of the person-

al property: *Moore v. Gordon*, 24-158; *Hale v. Hunter*, 24-181.

The heirs take the property as tenants in common: *Peters v. Jones*, 35-512.

The fact that administration is not granted does not vest title in the heirs: See notes to § 2367.

The widow can assert no right in personal property contrary to the will, except as provided in §§ 2371 and 2419: *In the matter of the estate of Jacob Daris*, 36-24.

Before the enactment of the provisions in §§ 1908 and 1909, held that although an alien could not inherit real estate, he might take a distributive share in personal property: *Greenheld v. Morrison*, 21-538:

SEC. 2437. The distributive shares shall be paid over as fast as the executor can properly do so.

Payment.

R. 2428.
C. 51, § 1391.

SEC. 2438. The property itself shall be distributed in kind whenever that can be done satisfactorily and equitably. In other cases the court may direct the property to be sold, and the proceeds to be distributed.

In kind.

R. 2424.
C. 51, § 1392.

SEC. 2439. When the circumstances of the family require it, the court, in addition to what is hereinbefore set apart for their use, may direct a partial distribution of the money or effects on hand at any time after filing the inventory and appraisement, upon the execution of security like that required of legatees in like cases.

Partial distribution: when made.

R. 2425.
C. 51, § 1393.

SEC. 2440. One-third in value of all the legal or equitable estates in real property, possessed by the husband at any time during the marriage, which have not been sold on execution or any other judicial sale, and to which the wife has made no relinquishment of her right, shall be set apart as her property in fee-simple, if she survive him. The same share of the real estate of a deceased wife shall be set apart to the surviving husband. All provisions made in this chapter in regard to the widow of a deceased husband, shall be applicable to the surviving husband of a deceased wife. The estates of dower and courtesy are hereby abolished.

Share of husband or wife.

R. 2477, 2479.
C. 51, §§ 1394,

1421.

9 G. A. ch. 151,

221, &

The interest of the wife in the lands of her husband, so long as it is inchoate only, may be enlarged, abridged or entirely taken away by the legislature. The extent of her interest is measured by the law in force at the time of her husband's death: *Lucas v. Saucier*, 17-517; *Moore v. Kent*, 37-20; but her interest in lands previously alienated by her husband, to which she has not relinquished her right of dower, cannot be increased by legislation subsequent to such alienation: *Moore v. Kent, supra*; *Daris v. O'Ferrall*, 4 Gr. 168; *Young v. Wolcott*, 1-174.

When property of the husband to

which the wife has not relinquished her right of dower was sold at judicial sale while Rev. § 2477 was in force, which did not contain the clause "which have not been sold on execution or any other judicial sale," and the husband died after the passage of 9 G. A., ch. 151, which did contain this clause, held, that the widow could not claim dower in the property so sold: *Sturderant v. Norris*, 30-65.

Upon the death of the husband the interest of the wife becomes vested and cannot be affected by subsequent legislation: *Burke v. Barron*, 8-132.

The act of 1862 did not take away the estate of dower theretofore exist-

ing, but simply enlarged it: *Moore v. Kent*, 37-20; *Kendall v. Kendall*, 42-464, and did not change the common law rule previously in force, that until dower is assigned it is not subject to execution or attachment in an action at law. Whether this rule is changed by the provisions of the present Code, *quare*: *Rausch v. Moore*, 48-611.

The nature of the dower right discussed generally, and it is said to be such interest as that it may be recovered in a real action: *Rice v. Nelson*, 27-148; *Huston v. Stringham*, 27-183, 197; and see notes to § 2444.

Although during the life-time of the husband the dower right is inchoate and contingent, yet it possesses the elements of property, and may be protected from fraudulent alienation through the connivance of the husband: *Buzick v. Buzick*, 44-259.

The widow has no interest in a pre-emption right: *Bowers v. Keesicker*, 14-301; *Longworthy v. Heeb*, 46-64.

A contingent right of dower cannot, during coverture (aside from any question as to an agreement to separate), become the subject of valid grant or conveyance between husband and wife: *McKee v. Reynolds*, 26-578; but a relinquishment of dower in an agreement to separate will be binding: *Robertson v. Robertson*, 25-350.

Where, previously to their marriage, a husband and wife had executed a written contract, by which they waived all right in each other's real estate, *held*, that on the death of the husband the wife could not claim dower: *Jacobs v. Jacobs*, 42-600.

A joint deed of husband and wife will operate as a release of the wife's dower interest, although it contain no express relinquishment thereof: *Edwards v. Sullivan*, 20-502; *Jones v. City of Des Moines*, 43-209.

An instrument relinquishing dower may be valid without being acknowledged or recorded: *Lake v. Gray*, 30-415.

The widow's dower right is subject to a mortgage for purchase money, although she did not join therein to release her dower: *Thomas v. Hanson*, 44-651.

An inchoate right of dower does not pass by an assignment in bankruptcy: *Lucas v. Bennett*, 42-703.

Held, that a foreclosure by notice and sale under the provisions of the Code of '51 was a "judicial sale," such as to bar widow's dower: *Sturte-*

vant v. Norris, 80-65.

In an action by a widow against a grantee of her husband under a conveyance in which she did not join to release her dower, to recover her dower interest in the property so conveyed, she can only recover her interest in the property without the improvements put thereon by the grantee; and where the grantee had increased the value of the property by securing the location of a railway depot thereon at considerable expense, *held*, that such expense was in the nature of improvements and should be taken into the estimate in favor of the grantee to the extent to which it increased the value of the property, not exceeding the amount actually expended. (Decided under the statutes existing prior to the Code): *Felch v. Finch*, 52-563.

The wife's one-third interest is not, as the interest of heirs, subject to the payment of claims against the estate: *Mock v. Watson*, 41-241; *Kendall v. Kendall*, 42-464.

Where the widow's interest exists in several tracts, her share may be assigned in a body. She cannot be compelled to take one-third of each tract: *Montgomery v. Horn*, 46-285; *Jones v. Jones*, 47-337.

The clause declaring that provisions as to widow of deceased husband shall apply to surviving husband of deceased wife, *held*, not applicable to the provisions of § 2371: See notes to that section.

A divorce procured for the fault of the wife deprives her of any interest in the property of her husband: § 2230 and note.

Where the widow's interest and the provisions of a will are inconsistent, the widow may elect: § 2452 and note.

The code commissioners say: "We have got rid of the word dower, as well as curtesy, entirely, because it has been a constant source of trouble and surprise upon those who are familiar with our statutes alone. The peculiar English doctrines of dower have been invoked again and again to confuse a right which should be as clearly defined by the statute as any other distributive share. The Supreme Court of Indiana has carried the tendency of our recent legislation to its logical result, by holding that the wife takes like any other heir;" quoting from *Fletcher v. Holmer*, 32 Ind., 497, and *Gaylord v. Dodge*, 31 Ind., 41; *Code Com'r's Rep.*

SEC. 2441. The distributive share of the widow shall be so set off as to include the ordinary dwelling house given by law to the homestead, or so much thereof as will be equal to the share allotted to her by the last section, unless she prefers a different arrangement. But no different arrangement shall be permitted where it would have the effect of prejudicing the rights of creditors.

Where the widow takes her third off as to include the homestead, she in fee out of the homestead, her share still has the homestead character, and a judgment existing against her will not become a lien thereon: *Briggs v. Briggs*, 45-318; *Nye v. Waliker*, 46-306; *Knox v. Hanlon*, 48-252.

When a widow elects to take her distributive share and has it so set

Homestead.
R. § 2426.
C. 51, § 1335.

off as to include the property not included in the homestead first exhausted in the payment of a mortgage lien upon the whole premises: *Wilson v. Hardesty*, 48-515.

An as bearing upon this section, see notes to § 2008.

SEC. 2442. The widow of a non-resident alien shall be entitled to the same rights in the property of her husband as a resident, except as against a purchaser from the decedent.

Widow of
alien.
12 G. A. ch. 56,
§ 2; ch. 193, § 2

SEC. 2443. The share thus allotted to her may be set off by the mutual consent of all parties interested, when such consent can be obtained, or it may be set off by referees appointed by the court.

How set off.
R. § 2427.
C. 51, § 1396.

The finding or judgment of one referee is not sufficient: *Jones v. Jones*, 47-337.

SEC. 2444. The application for such a measurement by referees, may be made at any time after twenty days and within ten years after the death of the husband, and must specify the particular tracts of land in which she claims her share, and ask the appointment of referees.

Application:
when made.
R. § 2428.
C. 51, § 1337.

A court of equity will exercise a general concurrent jurisdiction with a court of law in the assignment of dower, and the widow is not limited to the method provided in this section for obtaining her share: *Starry v. Sarry*, 21-234; *Phares v. Walters*, 6-106. And in addition to the special proceedings here provided, or a petition in equity, she may recover her dower by an action for the recovery of real property: *Nelson v. Rice*, 27-148.

To the action in equity or for the recovery of real property, the general statute of limitations (§ 2529, ¶ 5,) applies, but it does not commence to run until the heir or his assignee denies her right to dower: *Starry v. Starry* and *Nelson v. Rice*, *supra*; *Felch v. Finch*, 52-563. The limitation here provided applies only to proceedings in the probate court and not to an action to recover dower: *Sulley v. Nebergall*, 30-339.

SEC. 2445. The court shall fix the time for making the appointment, and direct such notice thereof to be given to all parties interested therein as it deems proper.

Notice.
R. § 2429.
C. 51, § 1338.

Where it appears that there was a service thereof imperfect, if the court determine in favor of its sufficiency, which fact is shown by the record,

the judgment will not be held void in a collateral proceeding. An error of the court as to the sufficiency of notice can only be attacked on appeal: *Shachan v. Leffer*, 24-217.

SEC. 2446. The referees may employ a surveyor, if necessary; and they must cause the widow's share to be marked off by metes and bounds, and make a full report of their proceeding to the court as early as practicable.

Duty of ref-
erees.
R. § 2430.
C. 51, § 1339.

SEC. 2447. The court may require a report by such a time as it deems reasonable; and, if the referees fail to obey this or any

Report : dis-
charge of.
R. § 2431.
C. 51, § 1400.

other order of the court, it may discharge them and appoint others in their stead, and may impose on them the payment of all costs previously made, unless they show good cause to the contrary.

SEC. 2448. The court may confirm the report of the referees, or it may set it aside and refer the matter to the same or other referees, at its discretion.

Confirmation:
new reference.
R. § 2432.
C. 51, § 1401.

Dower should be set off in specific portions of real property. It is not proper to determine simply the value | of the dower interest with a view to its being paid out of the assets of the estate: *Corriel v. Bronson*, 6-471.

SEC. 2449. Such confirmation, after the lapse of thirty days, unless appealed from according to law, shall be binding and conclusive as to the admeasurement, and the widow may in such proceeding, have a writ for the possession of the land thus set apart for her.

[In the printed code the words following "may" in the third line, are "bring suit to obtain possession of the land thus set apart for her." So the section read in the Revision and in the bill reported by the Code Commissioners, but it was amended and adopted by the legislature as here printed, and so reads in the original rolls in the office of the Secretary of State.]

SEC. 2450. Nothing in the last section shall prevent any person interested from controverting the right of the widow to the share thus admeasured.

SEC. 2451. If the referees report that the property, or any part thereof, cannot be readily divided as above directed, the court may order the whole to be sold and one-third of the proceeds to be paid over to the widow; but such sale shall not take place, if any one interested to prevent it will give security to the satisfaction of the court, conditioned to pay the widow the appraised value of her share with ten per cent. interest on the same, within such reasonable time as the court may fix, not exceeding one year from the date of such security. If no such arrangement is made, the widow may keep the property by giving like security to pay off the claims of all others interested upon the like terms. With any money thus paid to her the widow may procure a homestead, which shall be exempt from liability for all debts from which the former homestead would have been exempt in her hands. And such sale shall not be ordered so long as those in interest shall express a contrary desire, and shall agree upon some mode of sharing and dividing the rents, profits, or use of such property, or shall consent that the court divide it by rents, profits, or use.

SEC. 2452. The widow's share can not be affected by any will of her husband, unless she consents thereto within six months after notice to her of the provisions of the will by the other parties interested in the estate, which consent shall be entered on the proper records of the circuit court.

Share cannot
be affected by
will.
R. § 2435.
C. 51, § 1407.

The election, when once made, fixes the widow's relation to the estate, and such relation cannot be afterwards changed: *Ashlock v. Ashlock*, 52-319. But where the consent to the will was given in pursuance of an agreement whereby the heirs were to give her in addition certain other property, which agreement was not concurred in by all the heirs as contemplated, held, that she might withdraw her consent: *Richard v. Richard*,

30-465.

Unless a claim of dower is incompatible with the will, it will not be affected thereby: *Corriel v. Ham*, 2-552.

A devise to the wife will not be considered as in lieu of her dower unless made so by express words or necessary implication. If there is any doubt she will not be put to an election: *Clark v. Griffith*, 4-405; and a devise to the wife of one-thir-

of testator's real estate, *held*, not to bar her right to dower: *Watrous v. Winn*, 37-72.

Under certain facts, the provisions of a will, *held*, to be inconsistent with widow's dower right: *Cain v. Cain*, 28-31.

This provision refers to the widow's share of the real estate. She has no right to any share of the personal property which she can assert contrary to the provisions of the will: *In the matter of the estate of Jacob Davis*, 36-24.

Under Rev. § 2435, which provided that the widow's share should not be affected if she objected to the will, *held*, that silence and a failure to perform an act of relinquishment authorized the conclusion that she accepted

under the will, and that a subsequent will made by her could not act as such relinquishment: *Kyne v. Kyne*, 48-21.

By virtue of § 2440 this section applies equally to a husband's rights under the will of his wife; and *held*, that as the will passes the title of property therein devised at once to the devisee, subject to be divested or defeated by the objection of the husband or wife, if such party does not object he acquires no interest to which the lien of a judgment creditor can attach, and such creditor cannot in equity control the election of the surviving husband or wife as to abiding by or objecting to the will: *Shields v. Keys*, 24-298.

DESENT.

SEC. 2453. Subject to the rights and charges hereinbefore contemplated, the remaining estate of which the decedent died seized, shall, in the absence of other arrangements by will, descend in equal shares to his children. R. § 2436. C. 51, § 1408.

Prior to the passage of the act embodied in §§ 1908, 1909, an alien could not take any share of real property, he not having inheritable blood. See notes to § 1908. But *held* that under Rev. § 2422 (see § 2436) he might take a distributive share in personal property, notwithstanding the provision that such

property is to be distributed to the same persons as though it were real estate: *Greenheld v. Morrison*, 21-538.

An adopted child inherits from its natural parents as well as from its parents by adoption: *Wagner v. Varner*, 50-532.

SEC. 2454. If any one of his children be dead, the heirs of such child shall inherit his share in accordance with the rules herein prescribed in the same manner as though such child had outlived his parents. R. § 2437. C. 51, § 1409.

The mother of a child which dies while both its parents are living, cannot, upon the death of its father, claim any share in his estate as heir of such child: *McMenomy v. McMen-*

omy, 22-148; *Journell v. Leighton*, 49-501; and see *Will of Oerdieck*, 50-244 (construing § 2337).

Section applied: *McGuire v. Brown*, 41-650.

SEC. 2455. If the intestate leave no issue, the one-half of his estate shall go to his parents and the other half to his wife; if he leaves no wife, the portion which would have gone to her shall go to his parents. R. § 2438. C. 51, § 1410.

This provision applies only in the distribution of the estate of an *intestate*, and not where the property is otherwise disposed of by will: *Clark v. Griffith*, 4-405; *Dobson v. Dobson*, 30-410.

The one-half given to the wife in cases here contemplated, is inclusive of her one-third, or dower interest: *Burns v. Kene*, 21-257; *McGuire v. Brown*, 41-650.

SEC. 2456. If one of his parents be dead, the portion which would have gone to such deceased parent shall go to the surviving parent, including the portion which would have belonged to the intestate's wife, had she been living. R. § 2436. C. 51, § 1411.

Heirs of
parents.
R. § 2497.

SEC. 2457. If both parents be dead, the portion which would have fallen to their share by the above rules, shall be disposed of in the same manner as if they had outlived the intestate and died in the possession and ownership of the portion thus falling to their share, and so on through ascending ancestors and their issue.

Where an owner of property died, leaving neither issue, wife, nor parents living, *held* that his stepmother, surviving him, was entitled to one-sixth of his property: *Moore v. Weaver*, 58-11.

Under Rev. § 2497, children of the half blood inherited equally with children of the whole blood, when the inheritance was derived through the common parent. Whether the omission from this section of the Code of the words, "or either of them," which stood in that section of the Rev.

changes this rule. *quare: Neely v. Wise*, 44-544. That section construed, holding that the words "or either of them" had no meaning when both parents died before the decease of the intestate, and that in such case the property was to descend as though both had outlived him and died in the possession and ownership of the portion falling to their respective shares: *Bassil v. Loffer*, 38-431. The same section applied: *McGuire v. Brown*, 41-650.

Wife and her
heirs.
R. § 2439.
C. § 51, § 1418.

SEC. 2458. If heirs are not thus found, the portion uninheritited shall go to the wife of the intestate, or to her heirs if dead, according to like rules; and if he has had more than one wife who either died or survived in lawful wedlock, it shall be equally divided between the one who is living and the heirs of those who are dead, or between the heirs of all, if all are dead, such heirs taking by right of representation.

Advancement.
R. §§ 2445-6.
C. § 51, §§ 1419-
20.

SEC. 2459. Property given by an intestate by way of advancement to an heir, shall be considered part of the estate so far as regards the division and distribution thereof, and shall be taken by such heir towards his share of the estate at what it would now be worth if in the condition in which it was so given to him. But, if such advancement exceeds the amount to which he would be entitled, he cannot be required to refund any portion thereof.

ESTATES OF DECEASED PATENTEES.

[Seventeenth General Assembly, Chapter 38.]

Patent issuing
to deceased
patentee vests
title in heirs,
etc.

SEC. 1. Where patents have been, or may be issued in pursuance of any law of the state of Iowa, to a person who had died, or who hereafter dies before the date of such patent, the title to the land designated therein shall inure to, and become vested in the heirs, devisees or assignees of such deceased patentee, as if the patent had issued to the deceased person during life.

ESCHEAT.

When no heirs.
R. § 2446.
C. § 1414.

SEC. 2460. If there be property remaining uninheritited, it shall escheat to the state.

Where proceedings were brought by the attorney-general to recover for the state land claimed as an escheat, *held* that the legislature had power to order the proceedings abated and

to release the interest of the state in the property to the parties claiming adversely: *The State v. Tilghman*, 14-474.

SEC. 2461. When the judge or clerk has reason to believe that any property within the county should, by law, escheat to the state, he must forthwith inform the auditor of state thereof, and must also appoint some suitable person administrator to take charge of the property, unless an executor or administrator has already been appointed for that purpose in some county in the state.

SEC. 2462. The administrator must give such notice of the death of the deceased, and the amount and kind of property left by him within this state, as, in the opinion of the clerk or judge appointing him, will be best calculated to notify those interested or supposed to be interested in the property.

SEC. 2463. If, within six months from the giving of such notice no claimant thereof appears, such property may be sold and the money appropriated by the administrator for the benefit of the school fund, under the direction of the auditor of state; and such sale shall be conducted and the proceeds thereof treated like those of other school lands.

SEC. 2464. The money, or any portion thereof, shall be paid over to any one who shows himself entitled thereto within ten years after the sale of the property, or the appropriation of the money as an escheat, but not afterwards.

ILLEGITIMATE CHILDREN.

SEC. 2465. Illegitimate children inherit from the mother, and the mother from the children.

An illegitimate child will inherit anything coming to the mother by descent, even though the mother be

dead before the descent is cast: *McGuire v. Brown*, 41-650.

SEC. 2466. They shall inherit from the father whenever the paternity is proven during the life of the father, or they have been recognized by him as his children, but such recognition must have been general and notorious or else in writing.

The recognition in writing here contemplated need not be a formal avowal executed for the purpose of making known and perpetuating the fact, but any recognition in writing, as by letter or otherwise, is sufficient:

SEC. 2467. Under such circumstances, if the relationship has been mutual, the father may inherit from his illegitimate children.

SEC. 2468. But in thus inheriting from an illegitimate child, the rule above established must be inverted so that the mother and her heirs take preference of the father and his heirs, the father having the same right of inheritance in regard to an illegitimate child that the mother has in regard to one that is legitimate.

This section is probably retained by mistake, as it has no meaning where it stands. It is identical with § 1418 of the Code of 1851, where the words "the rule above established" refer to the rule provided by §§ 1410, 1411, of that Code, as to inheritance by parents of a decedent leaving no issue. These two sections were repealed by 7th G. A., ch. 63, and other sections adopted which rendered this section meaningless even in its original place, much more so here. For the provisions now standing in place of §§ 1410, 1411 of Code of 1851, see present Code, §§ 2455-7.

CHAPTER 5.

OF ACCOUNTING AND MISCELLANEOUS PROVISIONS.

SECTION 2469. On the expiration of six and within seven months from the first publication of notice of his appointment, and sooner if required by the court, the executor shall render his account to the court, showing the then condition of the estate, its debts and effects, and the amount of money received, and, if any received, what disposition has been made of it by him. And, from time to time as may be convenient, and as may be required by the court, he shall render further accounts until the estate is finally settled. And such final settlement shall be made within three years, unless otherwise ordered by the court. Such accounts shall embrace all matters directed by the court and pertinent to the subject.

SEC. 2470. The executor may be examined under oath by the court, upon any matters relating to his accounts when the vouchers and proofs in relation thereto are not sufficiently full and satisfactory.

SEC. 2471. He must account for all the property inventoried at the price at which it was appraised, as well as for all other property which has come into his hands belonging to the estate.

SEC. 2472. The appraisement is only presumptive evidence of the value of an article, and shall be so regarded, either for or against the executor.

SEC. 2473. He shall derive no profit from the sale of property for a higher price than the appraisement, nor is he chargeable with any loss occurring without any fault of his own.

SEC. 2474. Mistakes in settlement may be corrected at any time before final settlement and discharge of the executor, and even after that time on showing such grounds for relief in equity as will justify the interference of the court.

SEC. 2475. Any person interested in the estate may attend upon the settlement of accounts by the executor and contest the same. Accounts settled in the absence of any person adversely interested and without notice to him, may be opened within three months on his application.

[Some, but not all copies of the printed code, have "of" instead of "by," as in the original, after "accounts" in the second line.]

In the absence of fraud, mistake, ~~ested~~, cannot be set aside *after* the or other grounds of equitable relief, three months have expired: *Patterson v. Bell*, 25-149.

SEC. 2476. Upon final settlement by the executor, an order shall be entered discharging him from farther duties and responsibilities.

SEC. 2477. If judgment be rendered against an executor for costs in any suit prosecuted or defended by him in that capacity, execution shall be awarded against him as for his own debt, if it appear to the court that such suit was prosecuted or defended without reasonable cause. In other cases the execution shall be awarded against him in his representative capacity only.

SEC. 2478. One of several executors may receive and receipt for money. Such receipt shall be given by him in his own name only, and he must individually account for all the money thus received and receipted for by himself; and this shall not charge his co-executor, except so far as it can be shown to have come into his hands.

SEC. 2479. Whenever the court shall make an order affecting an executor, and such order cannot be personally served upon him, service of such order may be made by publication of a notice, stating the substance thereof, in some weekly newspaper published in the county where such order was made, for four weeks in succession.

SEC. 2480. When there is no newspaper published in such county, then said notice may be published in the newspaper published nearest to the county seat of the county in which said order is made, which publication may be proved as required in like cases in the court.

SEC. 2481. Service made as above shall be as effectual as if personally served, and suits and proceedings may be prosecuted or commenced, had and maintained, in all respects as if such notice or notices, order or orders, had been personally served.

SEC. 2482. Any executor failing to account, upon being required to do so by the court, or as he is required to do by law, shall, for every such failure, forfeit one hundred dollars, to be recovered in a civil action on his bond for the benefit of the estate, by any one interested therein.

SEC. 2483. An executor has no authority to act in a matter wherein his principal was merely executor or trustee.

SEC. 2484. Any person who, without being regularly appointed an executor, intermeddles with the property of a deceased person, is responsible to the regular executor when appointed, for the value of all property taken or received by him, and for all damages caused by his acts to the estate of the deceased, but his liability extends no farther.

The intermeddler is liable to an action by a creditor of the estate, as well as by the regularly appointed executor. The last clause of the section is only intended as limiting the amount of liability in such case:

Elder v. Littler, 15-65. And where the widow and heirs appropriate the assets of the estate prior to the appointment of an administrator, they are also liable in an action by a creditor: *Madison v. Shockley*, 41-451.

SEC. 2485. In an action against the heirs and devisees, where the judgment is to be against them in proportion to the respective amounts received by them from the estate, costs awarded against them shall be in like proportion.

SEC. 2486. In such cases, any one may tender the amount due from him to the plaintiff, which shall have the same effect, as far as he is concerned, as though he was the sole defendant.

SEC. 2487. When a person under such obligation to convey real estate as might have been enforced against him if living, dies before making such conveyance, the court may enforce a specific performance of such contract by the executor, and require him to execute the conveyance accordingly.

This provision is simply permissive. Without it, an action against the executor would have been improper; but the action may still be brought, as formerly, against the heirs alone: *Judd v. Moseley*, 30-423.

Who made parties.
R. § 2461.
C. 51, § 1486.

SEC. 2488. It is not necessary to make any other than the executor party defendant to such proceedings in the first instance; but the court, in its discretion, may direct other persons interested to be made parties, and may cause them to be notified thereof in such manner as the court may deem expedient. Heirs and devisees may, on their own motion, at any time be made defendants.

Considered as one person.
R. § 2482.
C. 51, § 1487.

SEC. 2489. In an action against several executors they are considered one person, and judgment may be taken and execution issued against all as such, although only part were duly served with notice.

RECORDS OF CLERK.

In probate matters.
9 G. A. ch. 71, § 1.

SEC. 2490. The clerk shall keep a record, additional to the other records required by law, showing as follows:

1. The name of every deceased person whose estate is administered, and who dies seized of any real estate situate within the county, and the date of his death;

2. The names of all the heirs at law, and widow of such deceased person, and the ages and places of residence of such heirs so far as the same can be ascertained;

3. A note of every sale of real estate made under the order of the court, with a reference to the volume and page of the court record, where a complete record thereof may be found.

Executor to furnish list of heirs.
Same, § 8.

SEC. 2491. In order to ascertain the facts required to be stated in such record, the clerk may require each executor or administrator to furnish him with a list of the names, ages, and place of residence of the heirs, which list shall be sworn to by the executor; but if such executor shall certify under oath that there are no heirs, or that, after using due diligence, he has been unable to ascertain their names, ages, or residence, the clerk shall make an entry in the record accordingly. If deemed necessary, the clerk may examine the county records to ascertain whether any deceased person died seized of real estate, and he shall be allowed such fee therefor as may be fixed by the court.

[The word "any" occurring in the printed code before "real estate" in next to the last line of the section is not in the original, and is therefore omitted here.]

Complete record.
Same, § 2.

SEC. 2492. In every case where a sale of real estate is made under the order of the court, either by an executor, administrator, or guardian, the clerk shall enter a complete record thereof in the court record, including complete records of all papers filed and all orders made, and of the deed and the approval thereof.

Bond record.
11 G. A. ch. 120.

SEC. 2493. He shall also keep a book known as "records of bonds," in which he shall record all bonds given by executors, administrators, and guardians.

COMPENSATION OF EXECUTORS.

Amount of.
R. § 2454.
C. 51, § 1429.

SEC. 2494. Executors shall be allowed the following commission upon the personal estate sold or distributed by them, and for the proceeds of real estate sold for the payment of debts, which shall be received in full compensation for all their ordinary services:

For the first one thousand dollars, the rate of five per cent.;

For the overplus between one and five thousand dollars, at the rate of two and a half per cent.;

For the amount over five thousand dollars, at the rate of one per cent.

SEC. 2495. Such farther allowances as are just and reasonable may be made by the court for actual, necessary, and extraordinary expenses or services. Same. R. § 2455. C. 51, § 1420.

REMOVAL OF EXECUTOR.

SEC. 2496. After letters testamentary, or of administration with the will annexed, or of administration, shall have been granted to any person, he may be removed whenever the interests of the estate require it, for any of the following causes: For what causes. R. § 2338. C. 51, § 1306. 11 G. A. ch. 139. § 7.

1. When by reason of age, continued sickness, imbecility of mind, change of residence, or any other cause, he becomes incapable of discharging his trust in such manner as the interest and proper management of the estate may require.

2. When any such executor or administrator shall fail or refuse to return inventories or accounts of sales of the estate, or to make reports of the condition of the estate, or fail or refuse to comply with any order of the court; or fail to seasonably apply to the court for authority to sell personal or real estate for the payment of debts or claims against the estate, when it shall be necessary for him so to do; or fail or refuse to discharge any of the duties prescribed for him by law, or shall be guilty of any waste or mal-administration of the estate;

3. Where it shall be shown to the court by his sureties that such executor or administrator has become, or is likely to become, insolvent, in consequence of which such sureties have or will suffer loss.

SEC. 2497. Petition for the removal of executors or administrators, or for the purpose of requiring additional sureties, shall be filed in the court from which letters were issued by any person interested in the estate. Petition for. 11 G. A. ch. 139. § 8.

SEC. 2498. Such petition must be verified by oath, and shall specify the grounds of complaint. Verification. Same, § 9.

SEC. 2499. Upon the filing of such petition, a citation shall issue to the person complained of, requiring him to appear and answer the complaint. Citation. Same, § 10.

SEC. 2500. If the executor or administrator is not a resident of the county where such complaint is made, notice thereof shall be served upon him in such manner as the court or clerk may direct. How served. Same, § 11.

SEC. 2501. Upon the removal of any executor or administrator, he shall be required by order of the court to deliver to the person who may be entitled thereto, all the property in his hands or under his control belonging to the estate. Property delivered to person entitled to. Same, § 13.

SEC. 2502. If any executor fail or refuse to comply with any proper order of the court, he may be committed to the jail of the county until compliance is yielded. Penalty for failure. Same, § 14.

SEC. 2503. Whenever the letters of any executor or administrator are revoked or superseded, all his authority shall cease, and all his acts thereafter as such shall be absolutely void. Removal of acts void. Same, § 16.

SUPPLEMENT.

TO VOL. 1.

[The numbers down the middle of the page show the pages to which the matter thereunder pertains. An index will be found at the end of the supplement to Vol. II.]

2.

SEC. 12.

[19 G. A., ch. 52, repeals so much of the substitute (18 G. A., ch. 38) as relates to compensation of officers and employes, and enacts in lieu thereof the following:]

SEC. 2. The compensation of the officers and employes of the general assembly shall be: To the secretary of the senate and chief clerk of the house, seven dollars per day each; to the assistant secretaries of the senate and clerks of the house, six dollars per day each; to the enrolling and engrossing clerks, five dollars per day each; to the sergeant-at-arms, door-keepers, janitors and postmasters, four dollars per day each, and mail-carrier five dollars per diem; to clerks of committees, three dollars per day each, and the necessary stationery for each of the clerks, secretaries, and their assistants aforesaid; to the paper-folders two dollars and fifty cents per day each; to the messengers two dollars per day each. And no other or greater compensation shall be allowed such officers and employes, nor shall there be any allowance of or for stationery except as above provided, postage, newspapers or other perquisites in any form or manner or under any name or designation. And this act shall apply to the officers and employes so named of the nineteenth general assembly for their full term of office.

6.

SEC. 31.

As the constitution requires a proposed amendment to be entered upon the journals of the respective houses of the general assembly when agreed to, such journals are higher evidence of the contents of such amendment as it was agreed to than the enrolled copy of the joint resolution proposing such amendment, signed by the presiding officers of the respective houses and by the governor: *Koehler v. Hill*, 60-543.

10.

SEC. 45, ¶ 11.

Calendar months are to be computed by reckoning from a given day to the day of a corresponding number where there is one: *Parkhill v. Town of Brighton*, 61-103.

20.

SEC. 93.

[19 G. A., ch. 123, amends the substitute enacted by 18 G. A., ch. 167, by striking out the words "the grantee" in the ninth line of the section as it

(1)

stands, and inserting in lieu thereof the words, "*such person or company, or on the application of a party claiming title to any land through such person or company*"; and further, by striking out the word "grantee," where it occurs in the tenth and fifteenth lines, and inserting in lieu thereof the word "applicant."]

If the certificate provided for in this section is introduced, it dispenses with all other proof, and makes at least a *prima facie* case. In the absence of such certificate the party must prove the selection of the lands, that they are within the grant, and

the construction of the road, so as to entitle the grantee to the lands under the act. But whilst the certificate establishes the title of the grantee, it is not essential to such title: *C., B. & Q. R. Co. v. Lewis*, 53-101.

25.

SEC. 120.

[20 G. A., ch. 119, amends this section by inserting after the word "clerk" in the sixth line thereof, the words "*and reporter.*"]

28.

16 G. A., Ch. 159.

Reports of State Board of Health.

[19 G. A., ch. 27, amends section 3 of this act by inserting after the word "copies," in the seventh line thereof, the following words: "*Of the report of the state board of health, five thousand copies, of which number five hundred copies bound in cloth, and twenty-eight hundred copies in double-thick paper covers, shall be delivered to the state board of health, and the state board of health shall send one copy to the clerk of each local board of health, and such clerk shall deliver the same to his successor in office, as the property of the state.*"]

Reports of officers, commissioners and institutions: when to be made.

[19 G. A., ch. 175, amends sections 1, 2 and 3 of the same act, to read as follows:]

Statement of expenditures.

SEC. 1. The adjutant-general, the superintendent of public instruction, the state librarian, the wardens of the penitentiaries, the visiting committee to the hospitals for the insane, the fish commissioner, the superintendent of the weather service, the state board of health, the commissioner of pharmacy, the state mine inspector, *except* all boards of commissioners having charge of the erections of public buildings, the board of curators of the state historical society, and all boards of trustees of state institutions, except the state agricultural college, shall, on or before the fifteenth day of August, preceding the regular sessions of the general assembly, make to the governor of the state a report of the condition and needs of the officers, institutions, and matters severally intrusted to their care, as well as of all other subjects upon which reports are now by law required of such officers, boards or commissions; and also a statement, showing in detail the expenditure of all public moneys placed or coming into their hands, with each voucher or duplicate voucher for such expenditures, *except* where such voucher or duplicate is required to be furnished some state officer at more frequent intervals.

Fiscal term ends when.

Provided, that the reports hereby contemplated, shall take the place of the various annual and biennial reports now required to be made by such officers, boards or commissions, except the annual report on insurance.

SEC. 2. The biennial fiscal term of the state shall end on the 30th day of June, in 1883, and each odd numbered year there-

after, and the succeeding term shall begin on the day following; and the reports of officers and institutions shall cover the period thus indicated, and shall show the condition of their offices and institutions respectively on that day: *Provided*, that this section shall not apply to the state agricultural college and farm.

The governor shall cause to be printed, of the various public documents, as follows: Of the biennial message, twelve thousand copies; of the governor's inaugural address, six thousand copies; of the report of the auditor of state, ten thousand copies; of the report of the superintendent of public instruction, six thousand copies; of the report of the state agricultural college, six thousand copies; and of each of the other reports, five thousand copies. The secretary of the state shall make distribution thereof as follows: To the members of the general assembly, eight thousand copies of the message, two thousand each of the inaugural address, the report of the auditor of state, and the report of the superintendent of public instruction, and two thousand copies each of the other reports; fifteen hundred copies of the message, and five hundred copies of each of the other documents, to remain with the state, for the use of future general assemblies and special calls therefor; fifteen hundred copies to be stitched and bound in boards in books containing a copy of each report, to be distributed as follows: one copy to each officer and member of the general assembly; one to each state officer; one to each state office to remain therein; one copy to each state institution to remain therein; one to each member of the several boards, and one to each officer of the institutions who is required by law to make report; one copy to each district judge, each circuit judge, and each district attorney; one to the office of the county auditor in every county to belong to said office; one copy to each newspaper in the state; eighty copies to the state historical society; a sufficient number to the secretary of state to enable that officer to make the distribution provided for in section 1898 of the code; and the remainder to be placed under the control of the executive council. The remaining unbound copies of the documents shall be distributed to the officers and institutions respectively making report.

29.

16 G. A., Ch. 159, § 4.

The journals of the respective houses: *Koehler v. Hill*, both of such houses; evidence to 60-543.
houses are competent
show the proceedings of either or

35.

18 G. A., Ch. 60, § 1.

[20 G. A., ch. 125, repeals this section and enacts in lieu thereof the following:]

SECTION 1. As soon as practicable after sufficient opinions are announced to make a volume, as herein provided, the supreme court reporter shall furnish and deliver at his office at Des Moines, Iowa, to the person, persons or corporation having the contract with the state for publishing the same, copies of such Reporter shall prepare opinions as soon as sufficient are announced to make a volume.

opinions, and with each opinion a syllabus, a brief statement of the facts involved, and, in all cases where he may deem it of sufficient importance, the legal propositions made by counsel in the argument, with the authorities cited, when the same have been prepared and furnished by counsel in a brief form and in a manner suitable for publication; but the argument shall not be reported at length, and within twenty days after the proof sheets for a volume have been furnished to him by the publishers at his office in Des Moines, Iowa, he shall furnish to such publishers an index and table of cases to such volume. The publishers shall furnish to the reporter without delay, as soon as they shall be issued, two copies of the revised proof sheets of the opinions, head notes, index and table of cases of each volume, for correction and approval by the reporter and judges of the supreme court, and shall cause such corrections to be made therein as shall be indicated by the reporter or said judges. Each of said volumes shall contain not less than 750, nor more than 800, pages, exclusive of the table of cases and index, and the workmanship and quality of material shall in every particular be equal to the first issue of volume forty of the Iowa supreme court reports, and shall be approved and accepted by a majority of the judges of the supreme court.

Number of
pages for each
volume.

Equal to vol-
ume 49.

38.

SEC. 162.

This section does not permit appeals in cases where there is no statute authorizing them; as, for instance, in the case of action of fence viewers: *McKeever v. Jenks*, 59-350. Where a circuit court has, under this section, exclusive jurisdiction, and a change of place of trial is granted, the case should be sent to some other circuit court, and not to the district court: *Schuchart v. Lam-mey*, 17 N. W. Rep. 467.

AFTER SEC. 163.

[A list of the judicial districts and circuits, as at present constituted, will be found in the supplement to page 1166. 17 G. A., ch. 51, divided the first, fifth and seventh judicial districts into two circuits each, and provided for the election of a circuit judge in each of said circuits. (See § 9 of that act, in supplement to page 157.) The same act contained the following:]

Jurisdiction
and powers of
circuit judges.

SEC. 10. The judges of the several first and second circuits by this act created, shall have and exercise within the counties constituting their said respective circuits, all the rights, powers and jurisdiction which are at this date possessed and exercised by the several circuit judges within said counties, and all provisions of law now applicable to the circuit court or to the judge thereof shall apply, and are hereby made to apply, with same force and effect, to said courts within said first and second circuits, and to the judges whose appointment and election are herein provided for, except so far as the same may be inconsistent with the provisions of this act.

Records.

SEC. 11. The records and books heretofore kept for the business of the circuit courts within and for said counties, shall be continued and used within said respective counties for the same purposes, under the provisions of this act.

Repealing
clause.

SEC. 12. All acts and parts of acts inconsistent with the provisions of this act, are hereby repealed.

[20 G. A., ch. 19, § 1, divides the sixth judicial district into two circuits, as shown in the supplement to page 1166. It also provides for the election of circuit judges in said circuits; see § 5 of the act inserted in supplement to page 157. Sections 2, 3 and 4 are temporary in character, providing for appointment of judge to 2d circuit until one can be duly elected, and for his performance of duties during that time. The other sections of the act are as follows:]

SEC. 6. The judges of said first and second circuits by this ^{Powers of}_{Judges.} act, created shall have and exercise within the counties constituting their said circuits, all the rights powers and jurisdiction which are possessed and exercised at this date by the circuit judge within said counties, and all provisions of law now applicable to the circuit court or to the judge thereof shall apply, and are hereby made to apply, with the same force and effect, to said court within said first and second circuits and to the judges whose appointment and election are herein provided for, except so far as the same may be inconsistent with the provisions of this act.

SEC. 7. The records and books heretofore kept for the busi- ^{Records.} ness of the circuit court within and for said counties shall be continued and used within and for said respective counties for the same purposes and under the provisions of this act.

SEC. 8. All acts and parts of acts inconsistent with the pro- ^{Repealing}_{clause.} visions of this act are hereby repealed.

[20 G. A., ch. 181, § 1, divides the fourth judicial district into two circuits, as shown in the supplement to page 1166. It also provides for the election of circuit judges in said circuits; see §§ 2 and 5 of the act inserted in supplement to page 157. The other sections of the act are as follows:]

SEC. 3. The present circuit judge of the said fourth judicial circuit, as constituted prior to the passage of this act, ^{Present Judge}_{to continue in} shall continue to be, and to exercise the powers and discharge ^{office until}_{January, 1885.} the duties of, circuit judge and hold the circuit court in each and all of the counties above named until the first day of January, A. D. 1885, and until his successors shall be duly qualified, after which the judges elected for the said circuits respectively shall each have and exercise, within the counties constituting their respective circuits, all the rights, powers, jurisdiction and authority, which now are, or by law shall be, conferred upon the circuit court and circuit judges of the state, and all provisions of law now applicable to the circuit court and circuit judges, shall apply to the said circuit courts and judges of said first and second circuits of said fourth judicial district.

SEC. 4. The records and books heretofore kept and used ^{Records con-}_{tinued.} for the business of the circuit court in the respective counties within said circuits, shall be continued and used in the respective counties for the same purpose under the provisions of this act.

ADDITIONAL CIRCUIT JUDGES.

[19 G. A., ch. 56, §§ 1 and 2, provide for the election of two circuit judges in certain circuits: See those sections inserted in supplement to page 157. Other sections of the act are as follows:]

SEC. 3. In circuits having two judges, the judges shall not ^{Transaction of}_{business in ci-} sit together in the transaction of the same business, but may ^{cuit court in}_{circuits having} together hold the same term, making an apportionment of the busi- ^{two judges.}

ness of said term between them; and they may hold terms in different counties at the same time.

SEC. 4. Immediately after the election and qualification of the additional judges provided for by this act, the circuit judges, and district judges for the districts embracing circuits having two circuit judges, as provided for by this act, shall together designate and fix, by an order under their hands, the times of holding the terms of said courts in each county in their districts for the years 1883 and 1884, and a similar order shall by them be made every two years thereafter.

Times of holding court in districts containing circuits having two judges.

[20 G. A., ch. 18, §§ 1 and 2, provide for the election of an additional circuit judge in the second judicial district: See those sections inserted in the supplement to page 157. Other sections of the act are as follows:]

Judges shall not sit together.

Fix terms of court.

SEC. 3. The judges of the circuit court in said circuit shall not sit together in the transaction of the same business, but may together hold the same term making an apportionment of the business of said term between them; and they may hold terms in different counties at the same time.

SEC. 4. Immediately after the election and qualification of the additional judge provided for by this act, the circuit judges and the district judge for said district shall together designate and fix by an order under their hand, the times of holding the terms of said court in each county in said district for the years 1885 and 1886, and a similar order shall be by them made every two years thereafter.

39.

SEC. 169.

A telegram from the judge to the clerk, making the proper direction as to adjournment, is a sufficient writ-

ten order within the requirements of this section: *The State v. Holmes*, 56-588.

40.

SEC. 177.

A decree signed by the judge and entered in vacation is valid, and not void, though it contain provisions not contained in the memorandum made in the judge's calendar at the trial; nor does the fact that it improperly provides for a sale of real property without redemption render a sale thereunder absolutely void: *Traer v. Whitman*, 56-443.

Entry of judgment on confession,

as contemplated in section 2897, may be made by the clerk in vacation and approved, under this section, at the next term: *Kendig v. Marble*, 58-529. A judgment cannot exist merely in the memory of the officers of the court or in memoranda entered upon books not intended to preserve the records of judgment. *Balm v. Nunn*, 19 N. W. Rep. 810.

SEC. 178.

A court may, on its own motion, correct its record; and may, upon discovering mistake or error in its rul-

ings, expunge the first ruling from the record and make a different one: *Wolmenstadt v. Jacobs*, 61-372.

43.

SEC. 190.

A judgment rendered by a judge who has previously been an attorney in the case, is not to be deemed absolutely void where it does not appear

that defendant has ever questioned or objected to such judgment: *County of Floyd v. Cheney*, 57-160.

SEC. 192.

This section must be construed as applying to courts other than those of probate, which are expressly authorized by § 2313 to appoint the time

and place for the hearing of matters requiring notice: *Casey v. Stewart*, 60-160.

44.

SEC. 196.

The judge's calendar is not a record of the court, and an entry thereon as to a decree cannot, in itself, be regarded as a decree; and where a subsequent decree was entered in vacation, containing provisions not found in the memorandum on judge's docket, *held*, that such provisions would not, therefore, be void: *Traer r. hitman*, 56-443. And see *Case r. Plato*, 54-64.

The entry in a judge's calendar is for the guidance of the clerk, and such entry is evidence tending to show a decree was ordered: *In re Estate of Edwards*, 58-431.

Where an indictment is lost, the court may, upon motion, substitute a copy, and proceed thereon as upon the original: *State v. Rivers*, 58-102; *State v. Stevisiger*, 61-623.

The judge's calendar is in the nature of a private memorandum book, designed merely to promote the convenience of the judge and clerk. It is not a record provided by law, and the entries made therein constitute the mere announcement of the judge's mental conclusion, and not the court's action: *State v. Manley*, 19 N. W. Rep., 211; *Miller v. Wolf*, 18 *Id.*, 889.

The judge's minutes upon his calendar do not constitute a judgment. Where it was sought, in an action on an injunction bond, to prove the dismissal of the action for injunction by proof of the entry on the judge's calendar "dismissed as per stipulation," and a stipulation was not shown, the evidence was held not sufficient: *Towle v. Leacox*, 59-42.

SEC. 197.

It is essential to the validity of the judgment that it appear upon the record book. This is approved by the judge, and constitutes the only proof of his acts. The judgment docket is intended to show merely an abstract of the judgment, and it is contemplated that it shall be made up from a judgment previously entered in the record book. Where the entry of judgment in the record book was blank as to amount of recovery, except the amount of costs, *held*, that it was only an entry of judgment to the amount of such costs, although the judge's calendar contained an entry directing the clerk to assess the amount of recovery, and the judgment docket contained an entry of an amount so assessed by the clerk: *Case v. Plato*, 54-64.

The only legal evidence of a judgment is the clerk's entry in the record provided by law, and the abstract of the same in the judgment docket. It cannot be proved by a memorandum in the judge's calendar: *Miller v. Wolf*, 18 N. W. Rep. 889.

Where the abstract of the judgment, as contained in the judgment docket, is introduced in evidence without objection, it should be regarded as evidence, even without proof of the loss or destruction of the original: *Moore v. McKinley*, 60-367.

Where the entry of a judgment upon the judgment docket did not show that it was entered against the proper party, by reason of a mistake of initials, and it did not appear whether there was a mistake in the judgment record or not; *held*, that it would be presumed, for the purpose of supporting an attachment proceeding, that judgment was properly entered upon the record, and therefore that the mistake in the entry upon the docket would not invalidate the judgment: *Preston v. Wright*, 60-351. A bar docket constitutes no part of the records of the court: *Gifford v. Cole*, 57-272.

As to sufficiency of indexing to impart notice, see notes to § 1944.

45.

SEC. 200.

Where a pleading is marked filed by the clerk, but no entry of such filing is made on the appearance docket, it cannot be considered as having been filed: *Padden v. Moore*, 58-703. And where the petition in an attachment proceeding was marked "filed" by the clerk, but not entered on the appearance docket, held, that the

action was properly dismissed upon motion, as the court was bound to consider the petition as not filed: *Nickson v. Bair*, 59-531.

This section does not apply in respect to the filing of depositions: *Byington v. Moore*, 19 N.W.Rep. 644. Nor to the filing of bills of exceptions: *Royer v. Foster*, 17 id. 516.

46.

SEC. 205.

A county has undoubted authority, through its board of supervisors, to employ counsel, and will be bound by a contract made for that purpose, even though it be not entered on the records of the board. Such contract may be proved by parol. *Jordan v. Osceola County*, 59-388.

A county can be made liable to pay for additional counsel, only as

the board of supervisors has determined such counsel to be necessary. The court cannot, at the request of the district attorney, appoint assistant counsel and thereby bind the county to pay therefor, at least, unless on account of the absence of the district attorney, and in order to prevent the failure of justice: *Seaton v. Polk County*, 59-626.

47.

SECS. 208, 209 and 210.

[These sections are repealed by the following act:]

[Twentieth General Assembly, Chapter 169.]

SECTION 1. The power to admit persons to practice as attorneys and counselors in the courts of this state, or any of them, is hereby vested exclusively in the supreme court.

SEC. 2. Every applicant for such admission must be at least twenty-one years of age, of good moral character, and an inhabitant of this state, and must have actually and in good faith pursued a regular course of study of the law for at least two full years, either in the office of a member of the bar of this state, residing therein, and in regular practice, or in some reputable law school in the United States, or partly in such office and partly in such law school: provided that in reckoning such period of study, the school year of any such law school consisting of not less than thirty-six weeks, exclusive of vacations, shall be considered equivalent to a full year.

SEC. 3. Every such applicant shall also be examined by the court, or by a committee of not less than three members of the bar, appointed by the court, as to his learning and skill in the law; and the court must be satisfied, before admitting to practice, that the applicant has actually and in good faith devoted the time hereinbefore required to the study of law, and possesses the requisite learning and skill therein.

SEC. 4. Such examination shall be held in open court: provided, that the graduates of the law department of the state university may be examined at the university, in Iowa City, by a committee of not less than three members of the bar, ap-

Power to
admit, vested
in supreme
court.

Qualification
of applicants.

Examination.

How examined
Proviso:
Graduates of
State Univer-
sity.

pointed by the supreme court for that purpose; and on production of his diploma from said law department, and a certificate by such committee that they have examined such applicant, and are of opinion that he possesses the learning and skill requisite for practice of the law, any such graduate may be exempted by the court from any further examination.

SEC. 5. Any person becoming a resident of this state, after having been admitted to the bar of any other of the United States, in which he has previously resided, may, in the discretion of the court, be admitted to practice in this state without examination or proof of period of study as hereinbefore provided, on proof of the other qualifications by this act required, and on satisfactory proof that he has practiced law regularly for not less than one year, in the state from which he comes, after having been duly admitted to the bar according to the laws of such state.

SEC. 6. All persons on being admitted to the bar, shall take an oath, or affirmation, to support the constitution of the United States and of the state of Iowa, and to faithfully discharge the duties of an attorney and counselor of this state, according to the best of their ability.

SEC. 7. The supreme court may, by general rules, prescribe the mode in which examinations under this act shall be conducted, and in which the qualifications required as to age, residence, character, and term of study shall be proved, and may make any further rules, not inconsistent with this act, for the purpose of carrying out its object and intent.

SEC. 8. Any member of the bar of another state, actually engaged in any cause or matter pending in any court of this state, may be permitted by such court to appear in and conduct such cause or matter while retaining his residence in another state, without being subject to the foregoing provisions of this act.

SEC. 9. Sections 208, 209, and 210, of the code, are hereby repealed, but nothing herein contained shall affect or impair the right of any person heretofore admitted to practice in any of the courts of this state to continue so to practice.

48.

SEC. 212.

See *Slemmer v. Wright*, 54-164.

SEC. 215.

A notice of the claim for a lien is sufficient if inserted in the original notice of the action (at least if signed by the attorney in his individual capacity as well as in his capacity as attorney for his client): *Smith v. C., R. I. & P. R. Co.* 56-720.

While service of notice of attorney's lien, in an action against a corporation, might not be sufficient if made upon one of the class of agents upon whom service of original notice

is authorized, yet if such service of notice of lien is upon one of such agents in connection with the service of the original notice, such service of notice of lien is sufficient, the service of the original notice being sufficient to charge such agent with a duty in relation to the matter: *Ibid.*

An attorney's lien may properly be claimed, not only in all actions on contract, but also in actions for damages arising from tort, and it will not

be defeated by the fact that the case is settled without judgment having been rendered: *Ibid.*

The lien attaches, after proper notice, not only for services then rendered, but for those thereafter rendered: *Ibid.*

An attorney can not have a lien upon any greater amount than shall actually be found to be owing by the opposite party to his client. And

where an attorney took an assignment of a judgment to secure his fees, *held*, that he stood in the shoes of his client, and must take the judgment with all the burdens, such as costs, taxed in favor of the opposite party, etc., attaching by the course of the litigation: *Tiffany v. Stewart*, 60-207; *Watson v. Smith*, 18 N. W. Rep. 916.

51.

SEC. 227.

A judgment rendered upon a verdict by a jury, some members of which are disqualified, is erroneous, but not void; it might be reversed

upon appeal, but it can not be disregarded as a nullity: *Foreman v. Hunter*, 59-550.

52.

SEC. 232.

The fact that vacancies in the jury panel are filled by talesmen instead of by the additional drawing herein provided for, is not a ground of chal-

lenge to the panel under § 2767, and can be raised, if at all, only by challenge to such talesmen when drawn: *Buford v. McGetchie*, 60-298.

61.

SEC. 282.

Where jurats to the affidavits, required under this section, were imperfect in that they did not show the official title of the officer, or were entirely without signature, *held*, the board might allow them to be

amended: *Stone v. Miller*, 60-243.

It is a compliance with the statute to show by affidavit that the signers of the petition were legal voters at the time of signing: *Ibid.*

SEC. 283.

While the board, in passing upon the sufficiency of the petition and remonstrance, acts in a judicial capacity, it is not authorized to consider

any evidence not specified, and can not, therefore, consider counter-affidavits: *Herrick v. Carpenter*, 54-340.

62.

SEC. 286.

If the ballot expresses the intention of the voter beyond a reasonable doubt, it should be counted, without regard to technical inaccuracies, or

the form adopted. The language of the ballot is to be construed in the light of all facts connected with the election: *Haues v. Miller*, 56-395.

SEC. 287.

While the action of the board in canvassing the vote is ministerial, its action in ordering a removal in accordance with the count made is

judicial, and may be reviewed on *certiorari*: *Herrick v. Carpenter*, 54-340.

63.

SEC. 289.

[19 G. A., ch. 147, amends 18 G. A., ch. 183, so as to insert "1882" in the place of "1880" in the second line of this section, and also the word "six" in place of "seven," in the eighth line, and 20 G. A., ch. 80, amends 19 G. A., ch. 147, so as to insert "1884" in place of "1882."]

64.

SEC. 290.

[19 G. A., ch. 147, amends 18 G. A., ch. 183, so as to insert "1882" in place of "1880" in the eighth line of this section, and 20 G. A., ch. 80, amends 19 G. A., ch. 147, by inserting "1884" in place of "1882."]

65.

17 G. A., Ch. 58, § 1.

[20 G. A., ch. 175, amends this section by striking out of the fifth and sixth lines the words "heretofore issued and outstanding at the time of the passage of this act," and inserting in lieu thereof, the words "*now outstanding*," and striking out the word "eight" in the twelfth line and inserting in lieu thereof the word "six."]

70.

SEC. 303.

The board of supervisors has power to compromise a judgment: *Collins v. Welch*, 58-72.

As incident to the care and management of the county property, the board may, in a proper case, employ an agent to aid them; and therefore, *held*, an agent employed by the county to find a purchaser for indemnity swamp lands, might maintain action for the value of his services: *Call v. Hamilton Co.*, 17 N. W. Rep. 667.

A county may be liable for injuries received from the falling of a bridge, which, though properly constructed, has become unsafe by decay of the timbers, if it has failed to exercise care and diligence in inspecting and repairing the same, whether the need of such repairs is open and obvious or not: *Huff v. Poweshiek Co.*, 60-529.

Whether any obligation rests upon the road supervisor to make small repairs for the purpose of keeping the county bridge in order, the county is not thereby relieved from its liability as to such bridges: *Roby v. Ap-panoosie Co.*, 18 N. W. Rep. 711.

While it has been held in this state, against the decided weight of authority in other states, that counties

are liable for damages caused by reason of the negligent construction and maintenance of county bridges, the court is not disposed to extend the rule which has been held applicable to bridges so as to make the county liable for damages resulting from the negligent construction of a county ditch, or from negligence in allowing the same to become obstructed: *Green v. Harrison Co.*, 61-311; *Nutt v. Mills Co.*, 61-754.

A county is not liable in damages for injuries received by reason of negligence in the construction of a court house. The principle holding a county liable for the defective construction of a county bridge is not to be extended further, or made to apply to public buildings. In such cases there is a difference between the liability of *quasi* corporations, such as counties, and that of municipal corporations: *Kincaid v. Hardin Co.*, 53-430.

Since the earliest decisions as to the liability of the county in relation to county bridges were made, the obligation to construct and repair such bridges has been expressly imposed upon the county by statute: See § 527.

73

REBUILDING PUBLIC BUILDINGS WITH INSURANCE MONEY.

[Nineteenth General Assembly, Chapter 54.]

SEC. 1. In any county in this state, where the public buildings thereof, or any of them, have been or may hereafter be destroyed by fire, wind, or lightning, the board of supervisors of such county, for the purpose of reconstructing the same, may

appropriate, in addition to the amount now authorized by law, the amount received by way of insurance on such building or buildings so destroyed.

AID BY TOWNSHIPS, CITIES, OR TOWNS IN ERECTION OF COUNTY BRIDGES.

[Nineteenth General Assembly, Chapter 63.]

SEC. 1. It shall be lawful for any township, incorporated town, or city, including cities acting under special charters, to aid in the construction of county bridges when the estimated cost of the same is not less than \$10,000, as fixed by the board of supervisors, as hereinafter provided.

SEC. 2. Whenever a petition shall be presented to the council or trustees of any incorporated town or city, or trustees of any township, signed by a majority of the resident property tax-payers of such township, incorporated town, or city, asking that the question of aiding the construction of a county bridge, to be situated in whole or in part within such township, incorporated town, or city, or within the township in which such incorporated town or city is situated, be submitted to the voters thereof, it shall be the duty of the trustees or council of such incorporated town or city, or trustees of such township, to immediately give notice of a special election, by publication in some newspaper published in the county, if any be published therein, and also by posting such notice in five public places in such township, incorporated town or city, at least ten days before such election, which notice shall specify the time and place of holding said election, the proposed location of the bridge to be aided, the rate per centum of tax to be levied, and whether the entire per centum voted is to be collected in one year, or one-half collected the first year, and all the conditions in the petition. At such election the question of taxation

Rate of tax to be certified. — shall be submitted, and if a majority of the votes polled be for taxation, then the recorder of the incorporated town, the clerk of the city or township, or clerk of said election shall forthwith certify to the county auditor the rate per centum of tax then voted by said township, city, or incorporated town, the year or years during which the same is to be collected, and the time and terms upon which the same, when collected, is to be paid as hereinafter provided under the stipulation contained in the notice under which such election was held, which said certificate shall be recorded in the office of the recorder of deeds of the county, and filed in the office of the county auditor. When such certificate

Levy and collection of tax. shall have been filed and recorded as aforesaid, the board of supervisors of the county shall, at the time of levying the ordinary taxes next following, levy the tax certified as above, under the provisions of this act, and cause the same to be placed on the tax list of the proper township, incorporated town, or city, indicating in their order, when and in what proportion the same is to be collected; and these facts shall be noted upon the tax list by the auditor. Said tax shall be collected at the time or times specified in said order in the same manner, and be subject to the same penalties for non-payment after the same becomes due and delinquent, as other taxes.

Sec. 3. The aggregate amount of tax to be voted or levied under the provisions of this act in any township, incorporated town, or city, shall not exceed five per centum of the assessed value of the property therein, respectively, nor shall it exceed one-half the estimated cost of the bridge sought to be aided as fixed by the board of supervisors.

SEC. 4. The moneys collected under the provisions of this act shall be paid out by the county treasurer, on the order of the board of supervisors of the county, and such order shall specify that it is on the special bridge fund belonging to the township, incorporated town, or city from which such tax has been collected, but in no case shall the said board make such order until the conditions specified in the petition and notice have been complied with.

SEC. 5. The petitioners may provide, by stipulations contained in the petition for the tax, the conditions upon which the board of supervisors may order the money, when collected, paid out.

SEC. 6. The expense of giving notice and holding the election provided for herein, shall be audited and paid out of the county fund like other claims against the county.

MONUMENTS TO DECEASED SOLDIERS.

[Twentieth General Assembly, Chapter 162.]

SECTION 1. The board of supervisors of any county in this state are hereby authorized to appropriate from the county funds, any sum of money not to exceed three thousand dollars, for the purpose of erecting on the court house square, public park at the county seat, or elsewhere in the county as the grand army posts of said county may direct, a soldiers' monument, on which shall be inscribed the names of all deceased soldiers and all who may hereafter die, who enlisted or entered the service from the county where such appropriation may be made, and also the names of such other deceased soldiers as the grand army posts of said county shall direct.

BURIAL OF SOLDIERS AND SAILORS.

[Twentieth General Assembly, Chapter 178.]

SECTION 1. It shall be the duty of the board of supervisors in each of the counties of this state, to designate some suitable person in each township, whose duty it shall be to cause to be decently interred the body of any honorably discharged soldier, sailor, or marine, who served in the army or navy of the United States during the late war, who may hereafter die without leaving sufficient means to defray funeral expenses. Such burial shall not be made in any cemetery or burial ground used exclusively for the burial of the pauper dead. *Provided*, The expenses of such burial shall not exceed the sum of thirty-five dollars, and *provided further*, that in case surviving relatives of the deceased shall desire to conduct the funeral, and are unable or unwilling to pay the charges therefor, they shall be permitted so to do, and the expenses shall be paid as herein provided.

**Head-stone
for grave.** SEC. 2. The grave of any such deceased soldier, sailor, or marine, shall be marked by a head-stone containing the name of the deceased and the organization to which he belonged or in which he served. *Provided*, Such head-stone shall not cost more than the sum of fifteen dollars, and shall be of such design and material as may be approved by the board of supervisors.

**Proviso: cost
not to exceed
\$15.**

Raid by county. SEC. 3. The expenses of such burial and head-stone shall be paid by the county in which such soldier, sailor, or marine shall have died. And the board of supervisors of such county is hereby authorized and directed to audit the account and pay the said expenses, in similar manner as other accounts against such county are audited and paid.

74.

SEC. 304.

[This section is repealed by 20 G. A., ch. 197, § 1.]

SEC. 307.

[20 G. A., ch. 197, § 2, amends this section so as to read as follows:]

**Newspapers
selected to
publish
proceedings.** SEC. 307. The board of supervisors shall, at its January session of each year, select two newspapers published within the county, or one, if there be but one published therein, having the largest number of *bona fide* yearly subscribers within the county, which circulation shall be determined as follows: in case of contest the applicants shall each deposit with the county auditor on or before a day named by the board of supervisors, a certified statement subscribed and sworn to before some competent officer, giving the names of the several post-offices and the number and the names of the *bona fide* yearly subscribers receiving their papers through each of said offices living within the county, such statements to be in sealed envelopes and opened by the county auditor upon direction by the board of supervisors to do so, and the two applicants thus showing the greatest number of *bona fide* yearly subscribers living within the county shall be the county official papers in which all the proceedings of the county board of supervisors, the schedule of bills allowed; and the reports of the county treasurer including a schedule of the receipts and expenditure shall be published at the expense of the county during the ensuing year, and the cost of such publication shall not exceed one-third the rate allowed by law for legal advertisements, and *provided*, that in counties having ten thousand inhabitants or more, a newspaper printed in each foreign language if published within the county may also be selected in which such proceedings shall be published under the same limitation as to compensation, and the county auditor shall furnish all such papers selected a copy of such proceedings for that purpose; and furthermore *provided*, that in counties having two county seats each district shall be regarded as a county for that purpose. In case charges of fraud are made by an aggrieved publisher, the board shall seek other evidence of circulation and the aggrieved publisher shall have the right of appeal to the circuit court for redress of grievance. Said appeal shall be taken as in ordinary actions, and in case of appeal, neither publisher to the contest

**Proviso:
counties of
10,000 inhabi-
tants shall pub-
lish also in pa-
pers printed in
foreign lan-
guages.**

**Proviso: two
county seats.**

**Right of
appeal.
How taken.**

shall receive pay for publishing such proceedings until the case is disposed of in the circuit court.

[Decisions under the original section:] The treasurer's semi-annual report is not part of the proceedings of the board within the meaning of this section: *Haislett v. County of Howard*, 58-377.

The publisher of a newspaper has no such interest as to be entitled, upon *cetiorari*, to question the legality of the proceedings of the board of supervisors in selecting other newspapers as the official papers of the county: *Iowa News Co. v. Harris*, 17 N. W. Rep., 745.

80.

PAYMENT OF OUTSTANDING WARRANTS BY COUNTY TREASURER

[Nineteenth General Assembly, Chapter 103.]

SEC. 1. County treasurers are hereby authorized to issue calls for outstanding warrants at any time he may have sufficient funds on hand for which such warrant was issued; and from and after such calls have been made, public interest shall cease on all warrants included in said call.

SEC. 2. County treasurers shall publish said notice twice in Notice, the newspaper having the largest circulation in the county in which such publication is made, and each notice shall designate the warrants called.

86.

SEC. 368.

[20 G. A., ch. 64, amends this section so as to read as follows:]

SEC. 368. In the above inquisition by a coroner, when he or the jury deem it requisite, he may summon one or more physicians or surgeons to make a scientific examination, who, instead of witness fees, shall receive such reasonable compensation as may be allowed by the county board of supervisors. Coroner may summons physicians.

88.

SEC. 382.

[20 G. A., ch. 106, amends this section by inserting after the words "city or town," in the second line thereof, the words "with a population exceeding fifteen hundred inhabitants." The same act contains also the following:]

Remonstrances signed by such legal voters may also be presented at the hearing before the board of supervisors hereinafter provided for, and, if the same persons petition and remonstrate, they shall be counted on the remonstrance only.

SEC. 384.

Where the application is properly made, the board has no discretion, to make the division: *Henry v. Taylor*, 57-72. and may be compelled by mandamus

89.

AFTER SEC. 389.

EMPLOYMENT OF ATTORNEYS BY TOWNSHIP TRUSTEES.

[Twentieth General Assembly, Chapter 120.]

SECTION 1. Whenever litigation shall arise involving the

When made parties to certain suits.

May levy tax to pay for legal service.

Assessor in township containing city or town.

Assessor in cities or towns.

right or duty of township trustees to certify or levy taxes which have been authorized upon expressed conditions, then, in such cases, if the trustees are made parties to said litigation, they shall have authority to employ attorneys in behalf of said township, and are further authorized to levy the necessary tax to pay for said legal services, and to defray the unavoidable expenses of said litigation.

SEC. 390.

[19 G. A., ch. 110, repeals this section, as re-enacted by 16 G. A., ch. 6, and amended by 18 G. A., ch. 201, and enacts in lieu thereof, the following:]

SEC. 390. At the general election in the year 1882, and biennially thereafter, there shall be elected in each township a part of which is included within the incorporate limits of any incorporated city or town, by the qualified voters of such township residing without the corporate limits of such city or town, one assessor in the same manner as provided by law for the election of township assessors, and at the regular municipal election of each incorporated town or city in the year 1882, and biennially thereafter, whether such city or town embraces one or more townships or parts of townships, there shall be elected by the qualified voters of such city or town one or more assessors for such city or town, and such assessors shall be restricted in the discharge of their official duties to the limits within which they are elected, and shall hold their offices for the term of two years from the first day of January next ensuing. The city council of any incorporated city having a population of ten thousand or over may, by a resolution to be adopted at least five weeks before the time for any regular municipal election, determine whether it shall be necessary to elect more than one assessor, and fix the number thereof, not exceeding three, and thereupon the mayor of such city shall make proclamation of such determination in like manner, and at the same time that he shall proclaim the election of other city officers to be elected at the municipal election next ensuing, and such resolution shall also divide such city into districts for assessment purposes; and the county auditor of the county in which such city is situated, upon being notified of such division, shall provide a separate assessment book for each of said assessment districts. Said assessors, when so elected, shall give bond and qualify, receive the same compensation, be under like penalties, and perform the same duties in like manner as township assessors, except as herein provided. In case there should be a failure to elect, [or] a vacancy shall occur in the office of assessor within such incorporated city, the city council may elect some suitable person to perform the duties of such office for the unexpired term. It shall be the duty of such assessors, if more than one shall have been elected, to meet at least once a week, and oftener if they shall deem it necessary, and carefully compare valuations in order to secure a uniform assessment of all the property of such city, and when so met they shall constitute a board of assessment, a majority of whom shall determine the value of any property as to which difference may arise in such board: *Provided*, that the city council of any city or town, having a population as aforesaid

shall have power in the year 1882 by resolution to increase the number of assessors not exceeding three, and to appoint the additional number provided for; and each assessor so appointed shall qualify and act and hold *their* [his] office for the term as provided for in this act.

90.

SEC. 391.

No provision is made for the payment by the county of compensation for the place thus designated, and it is not liable therefor: *P. H. Turner & Co. v. Woodbury County*, 57-440; *McBride v. Hardin Co.*, 58-219.

SEC. 392.

Written orders for the relief of poor persons, given by the township trustees under § 1365, are valid, without being otherwise made of record under this section, or § 395: *Bremer County v. Buchanan Co.*, 61-624.

95.

SEC. 418.

The provisions of this section are superseded by the act establishing a state board of health (18 G. A., ch. 151, § 13), to be found on page 451: *Staples v. Plymouth Co.*, 17 N. W. Rep. 569.

98.

SEC. 424.

A court will take judicial notice in what county a given town is situated: *State v. Reader*, 60-527.

102.

16 G. A., Ch. 47, § 4.

[20 G. A., ch. 158, amends this section by striking out the following words: "Provided, that the provisions of this act shall not apply to cities organized under special charter," and inserting in lieu thereof the following: "The provisions of this chapter shall apply to cities organized and acting under special charters."]

103.

SEC. 438.

[19 G. A., ch. 164, amends this section by inserting after the word "own," in the eleventh line, the following:]
Except in cities of the first class, where such special election is, or shall have been, held on the first Monday of March of an even year, when they shall hold their offices for the term of two years thereafter. All ordinances of such city or town in force at the time of the abandonment of such special charter, not inconsistent with the general incorporation laws of the state, shall be and remain in force until otherwise altered, amended, or repealed by the council or trustees of such new organization.

106.

CHANGING NAMES OF CITIES AND TOWNS.

[Nineteenth General Assembly, Chapter 16.]

SEC. 1. The corporate name of any city of the first or second class or incorporated towns in this state may be changed in the manner prescribed by this act.

SEC. 2. The council of any city of the first or second class, or any incorporated town may, by resolution, propose a change of

Resolution proposing the corporate name of such city or incorporated town setting forth therein the proposed new name, which shall not be the same as that of any city of either the first or second class or incorporated town or post-office existing in this state at the time of the passage of such resolution.

Question submitted to vote. SEC. 3. The question of making such change shall then be submitted to a vote of the qualified electors of such city or incorporated town at the next following annual election, or at a special election, as the council may provide. Notice that a change of name is to be voted on at any election shall be published in a newspaper published in said city or incorporated town at least ten days before the election.

Notice.

Manner of voting.

Record of change.

Change deemed complete.

Not to affect rights or liabilities.

SEC. 4. The manner of voting on the question of change shall be by having printed or written on the ballots, "Shall the name be changed as proposed?" followed by the word "yes," or "no." If a majority of the votes cast for and against are in favor of the proposed change, the clerk of the city or incorporated town shall enter upon the records of the city or incorporated town the result of such election, and set forth in such record the new name adopted for such city or incorporated town, as well as the original name thereof, and shall cause to be filed a certified copy of the entry so made in the office of the recorder of deeds of the county in which such city or incorporated town is situated and in the office of the secretary of state.

SEC. 5. When certified copies are made and filed, as required by the preceding section, the change of name shall be deemed complete, and the new name thus adopted shall be judicially recognized in all subsequent proceedings wherein said city may be interested.

SEC. 6. Nothing herein contained shall in any manner affect the rights or liabilities of said city or incorporated town, nor invalidate any contract to which the said city or incorporated town may be a party before such change.

SEC. 456.

This section does not confer power to punish any one, or prescribe penalties for permitting gambling, or engaging therein: *Incorporated Town of New Hampton v. Conroy*, 56-498.

Nor does the power given to suppress and restrain houses of ill fame carry with it the power to punish as an offense the keeping of such houses: *City of Chariton v. Barber*, 54-960.

But a municipal corporation does have authority, under this section, to provide by ordinance for the punishment of intoxication: *Town of Bloomfield v. Trimble*, 54-899; and an ordinance providing that the keeping, etc., of any house, etc., within the city limits where loud or unusual noises are permitted, or where persons are permitted to congregate and engage in the use of profane and vulgar language to the disturbance of others, shall be considered and punished as a common nuisance, held,

within the authority of the city to pass, under this section: *City of Centerville v. Miller*, 57-56 and *same v. same*, 57-225.

The power given by this section in relation to nuisances is to abate them, and in the exercise of this power a municipal corporation can not provide for the punishment by fine of one who maintains a nuisance: *Incorporated Town of Nevada v. Hutchins*, 59-506. The power of the city council to abate nuisances does not enable it to determine conclusively that a particular thing constitutes a nuisance, and if it orders the removal of a thing, which is in fact not a nuisance, the person causing its removal will be individually liable in damages: *Cole v. Kegler*, 19 N. W. Rep., 843. The owner of property would not in such cases be limited to his remedy by *cetiorari* to annul the illegal action of the council. *Ibid.*

ENLARGING THE POWERS OF CITIES.

[Nineteenth General Assembly, Chapter 89.]

SEC. 1. Cities organized under the general incorporation laws of the state, in addition to the powers now granted them, shall have power: To regulate, license and tax ^{doctors, &c., itinerant} doctors, junk dealers, pawnbrokers, &c. physicians and surgeons, junk dealers, and to prohibit pawnbrokers and junk or second-hand dealers purchasing or receiving from minors without the written consent of their parents or guardians.

SEC. 2. To require all buildings to be numbered; and in case of the failure of the owners to comply with such requirement, to cause the same to be done, and to assess the cost thereof against the property or premises numbered.

SEC. 3. To deepen, widen, cover, wall, alter or change the channel of water-courses within their corporate limits.

SEC. 4. To regulate and control the construction of chimneys, stacks, flues, fire-places; hearths, stove-pipes, ovens, boilers, and heating apparatus used in or about buildings, and to require and regulate the construction of fire-escapes, and to cause any or all of them to be removed, or placed in a safe condition, when considered dangerous, and to assess the cost thereof on the property and against the owners thereof.

SEC. 5. To regulate manufactories which are dangerous in causing or promoting fires; to prevent the deposit of ashes and combustible matter in unsafe places; and to cause all such buildings and enclosures as may be in a dangerous or unsafe state to be put in a safe condition.

SEC. 6. To regulate the use of lights in stables, shops and other places, and the building of bonfires, and to regulate or prohibit the use of fire-works, fire-crackers, torpedoes, roman candles, sky-rockets and other pyrotechnic displays.

SEC. 7. To provide for the inspection of steam-boilers, and all places used for storage of explosive or inflammable substances materials, and to prescribe the necessary means and regulations to secure the public against accidents and injuries therefrom, and to assess the costs and expense of such proceedings against the property and owners thereof.

SEC. 8. To require the connection from gas-pipes, water-pipes, and sewers to the curb-lines of adjoining property to be made before the permanent improvement of the street whereon they are located, and to regulate the making of such connections on streets already improved, and to enforce such requirement as provided by law.

SEC. 9. To establish all needful regulations as to the management of packing and slaughter houses, renderies, tallow-chandleries and soap-factories, bone-factories, tanneries, and manufacturers of fertilizing and chemicals within the limits of such cities, and the deposit and removal of all offensive material and substances, and the engendering of offensive odors and sights therefrom, as will protect the public against the same.

SEC. 462.

An ordinance discriminating in favor of resident merchants of the city as against other merchants of the state or non-resident merchants, or in favor of those selling goods of domestic manufacture and against those

selling goods of foreign make, by imposing a license tax upon the latter, which is not required of the former, is unconstitutional: *City of Mar-*

shalltown v. Blum, 58-184; *Town of Pacific Junction v. Dyar*, 19 N. W. Rep., 862.

103.

SEC. 463.

[19 G. A., ch. 136, amends this section by adding after the words, "wine saloons," in the seventh line the following words, "but no license issued therefor shall extend beyond the first day of May following the grant thereof."]

A city or town has no authority to regulate or provide a penalty for the sale of intoxicating liquors, other than vinous or malt: *Incorporated Town of New Hampton v. Conroy*, 56-498; *Town of Cantril v. Sainer*, 59-26.

Where an ordinance prohibiting the sale of malt and vinous liquors, also prohibited the sale of other intoxicating liquors, which the town had no power to prohibit, held, that the ordinance would be supported and enforced so far as within the lawful authority of the town: *Town of Eldora v. Burlingame*, 17 N. W. Rep., 47.

SEC. 464.

A railway having been located over the streets of a city at a time when it was not required to compensate adjacent property owners for such use, held that after the amendment of § 1262 which, in connection with this section, made it necessary that compensation be made in such cases, new switches and side tracks could not be laid in connection with such railway without such compensation being made: *Drady v. D. M. & Ft. D. R. Co.*, 57-393. So, also, held that these provisions for compensation apply to a railroad authorized by ordinance and partly constructed prior to the time that the section containing said provisions went into effect: *Hanson v. C., M. & St. P. R. Co.*, 61-588; *Mulholland v. D. M., A. & W. R. Co.*, 60-740.

Under this section, as amended by 15 G. A., ch. 6, the damages for which compensation is to be made are not limited to damages arising from a change of grade, but extend to all legitimate damages arising under ch. 4, title 10 of the Code: *Drady v. D. M. & Ft. D. R. Co.*, 57-393.

As to liability of railway in damages for laying track nearer to sidewalk than allowed by ordinance, see *Cain v. C., R. I. & P. R. Co.*, 54-255.

As to right to permit use of streets

Rep., 148.

Licenses under this section are not contracts between the State and the person licensed, but are merely temporary permits to do what would otherwise be an offense, issued in the exercise of police power, and subject to the direction of government, which may revoke them as it deems fit. Whether in case of a revocation the person licensed would, in a proper proceeding, be entitled to have refunded to him the *pro rata* portion of the license paid, *quaere*: *Town of Columbus City v. Cutcomb*, 17 N. W. Rep., 47.

by horse railway, see *O'Niel v. Lamb*, 53-725.

The provisions of this section, as to the manner of assessment of damages resulting from the location of a railway upon the streets of a city, refer exclusively to the company and not to the abutting owner; such owner does not have any interest in the fee of the street, and he can not take steps to have his damages assessed by a sheriff's jury according to the provisions applicable where property is taken for right of way; therefore he may bring action for damages without such proceeding: *Mulholland v. D. M., A. & W. R. Co.*, 60-740.

A city is not clothed with power to permit or forbid railroad companies to acquire private property in a city for right of way, and therefore the city can not be held liable for damages to the property owner from the construction of an embankment upon a right of way through private property: *Callahan v. City of Des Moines*, 17 N. W. Rep., 470.

A city council may vacate an alley for the purpose of allowing it to be devoted to a private use, if the power of vacation is otherwise rightfully exercised and no private rights are injuriously affected: *City of Marshalltown v. Forney*, 61-573.

110.

SEC. 465.

The township trustees can not include an incorporated town in a road district, and the road supervisor has no authority over its streets. For an accident resulting from acts

of such supervisor in repairing such streets the town is liable: *Clark v. Independent Town of Epworth*, 56-462.

111.

SEC. 466.

The assessment is to be made upon owners of property abutting upon the part of the street which is improved: *Kendig v. Knight*, 60-29.

A municipal corporation is not liable for failure to provide gutters or culverts adequate to keep the surface water from off adjoining lots which are below grade, even when it raises the street above the natural surface for the purpose of conforming it to grade: *Freberg v. City of Davenport*, 18 N. W. Rep., 705.

While the preparatory work of

grading to put a street in condition for paving may be included in the assessment for such paving, it cannot be assessed separately. The section confers no authority to assess for grading alone. Where the city contracted for grading, agreeing to issue in payment therefor certificates of assessment against abutting owners, held, that as such owners were not liable, the contractor might recover from the city: *Becroft v. City of Council Bluffs*, 18 N. W. Rep., 807.

GENERAL PAVING FUND.

[Nineteenth General Assembly, Chapter 38.]

SEC. 1. The cost of paving the intersections of streets and alleys in all cities organized under the general incorporation laws of this State, including cities acting under special charters therein, and which have not commenced to pave the same at the expense of the property fronting on the street or streets paved, shall be paid for out of a general paving fund to be raised or created as hereinafter provided: *Provided*, nothing herein contained shall prevent councils of said cities from requiring railroads and street railways to pave any portion of said intersections.

SEC. 2. In addition to the taxes which they are now empowered to levy, the city council of any such city are hereby authorized to levy a special tax, not exceeding two mills on the dollar on the assessed valuation of all property in such city, for the purpose of creating such general paving fund.

SEC. 3. The money raised by the tax hereby authorized to be levied shall not be used for any other purpose than that hereby contemplated.

SEC. 4. It shall be competent for any city authorized by this act to levy such tax, to anticipate the collection thereof by borrowing money and pledging such tax, whether levied or not, for the payment of the money so borrowed, but such money shall be used or appropriated to no other purpose.

SEC. 5. Any city organized or acting as aforesaid, and which shall have paved the intersections of any of its streets and alleys at the expense of the property fronting on said street, may, by ordinance, avail itself of the benefits of this act: *Provided*, such ordinance shall receive the affirmative vote of two-thirds of all the members of the city council thereof.

Paving intersections of streets and alleys.

Special tax for paving fund.

Pledging tax.

Applicable to paving already done.

STREET IMPROVEMENTS IN CERTAIN CITIES.

[Twentieth General Assembly, Chapter 20.]

- Grading, paving, etc.** SEC. 1. Cities of the first class, that have been or may be so organized since January first, 1881, shall have power to open, widen, extend, grade, construct permanent side-walks, curb, pave, gravel, macadamize and gutter, or cause the same to be done in any manner they may by ordinance deem proper, any street, highway, avenue, or alley within the limits of such city, and may open, extend, widen, grade, park, pave or otherwise as aforesaid, improve part of any such street, highway, avenue or alley, and levy a special tax as hereinafter provided, on the lots and lands fronting and abutting on such street, highway, avenue or alley, and where said improvements are proposed to be made to pay the expenses of the same. But unless the owners, resident in such city, of a majority of the front feet owned by them, of the property subject to assessment as hereinafter provided, for such improvements, shall petition the council of such city to make the same, such improvements shall not be made until three-fourths of all the members of such council shall by vote, assent to the making of the same: *Provided*, that the construction of permanent side-walks, curbing, paving, graveling or macadamizing of any such street, highway, avenue or alley, shall not be done until after the bed of the same shall have been brought so near to the grade as established by the ordinances of such city, as that said side-walks, curbs, paving or other improvements as aforesaid, when fully completed, will bring said streets, highways, avenues or alleys fully up to said established grade.
- Tax abutting property.** SEC. 2. It shall be the duty of the council of said city to require all of the work necessary to the making of any improvements authorized by section one hereof, to be done under contract thereof, to be entered into with the lowest responsible bidder, and bonds with good and sufficient surety for the faithful performance of such work, shall be required to be given by the contractors; *provided*, that all bids for such work, or any part thereof, may be rejected by such council, and new bids ordered.
- Petition.**
- Proviso.**
- Contract.**
- Proviso.**
- Improvement districts.** SEC. 3. Any such city shall, for the purpose of effectuating the objects enumerated in section one hereof, have power, by ordinance, to create improvement districts, which shall be consecutively numbered. The cost of opening, extending, widening, grading, constructing permanent side-walks, curbing, paving, graveling, macadamizing and guttering any street, highway, avenue or alley, within any improvement district, except spaces in front of city property, and any other property exempt from special taxes except the intersections of streets, highways or avenues and space opposite alleys, and except as to paving, graveling or macadamizing between and outside the rails of railways and street railways, shall be assessed upon the lots and lands abutting the same, in proportion to the front feet so abutting upon such street, highway, avenue or alley, where said improvements are proposed to be made, the assessment of the special taxes herein provided for shall be made as follows: The total cost of the im-
- Tax abutting property.**

proveinent, except spaces in front of city property and any other property exempt from special taxation, and except as to intersections of streets, highways or avenues, and space opposite alleys, and except as aforesaid, as to the paving, graveling or macadamizing between and outside the rails of any railway or street railway, shall be levied upon the property as aforesaid, and become delinquent as herein provided; one fifth shall become delinquent Tax system. in ninety days after such levy, one fifth in two years, one fifth in four years, one fifth in six years, and one fifth in eight years, after the levy is made. Such special taxes shall be payable by the owners of the property upon which they are levied as aforesaid, at or before the times they become delinquent, as hereinbefore provided and in the installments herein mentioned; and shall also be a lien upon the lots and lands so assessed, and shall draw Lien; interest interest at the rate of six per cent per annum from the time of the levy aforesaid, until the same shall be paid or become delinquent, whichever shall first happen, said interest to be payable semi-annually, or annually as the council of such city may deem best. The property so assessed may be sold for the payment of any installment of said tax or interest as aforesaid, which is payable and delinquent at the time in the same manner, at any regular or adjourned sale or special sale called therefor, with the same forfeitures, penalties and right of redemption, and certificates and deeds on such sales shall be made in the same manner and with like effect as in case of sales for non-payment of the ordinary taxes of such city, as now or hereafter provided by law in respect thereto: *Provided* however, that the sale of any property for the non-payment of any installment as aforesaid, either of tax or interest, shall not be taken or construed as in any manner affecting the validity of the lien on the same for any installment thereof, with interest as aforesaid, which may subsequently become delinquent and payable, such city council may provide by ordinance for the mode of making and returning the assessment hereinbefore authorized; and payment of such assessment after they become delinquent, and if interest as aforesaid, may, if so directed by said council, be enforced by suit in court, in the manner and by the proceedings provided by sections 478 and 481 of the code. In case of omissions, errors, or mistakes in making such assessment or levy, in respect of the total cost of the improvement, or in case of deficiencies or otherwise, it shall be competent for the council to make a supplemental assessment and levy to support such deficiencies, omissions, errors or mistakes; said supplemental assessment and levy shall be a lien on the lots Tax lien. and lands as aforesaid, shall be payable in the same manner and in the same installments, shall draw interest at the same rate, and shall be capable of enforcement in the same manner as hereinbefore provided, with respect to the original assessment and levy. Said taxes shall constitute a sinking fund for the payment of the costs of the opening, extending, widening, grading, or any other improvements herein specified, of the street, highway, avenue or alley, on which the property abuts, upon which the same are levied, and shall be used and appropriated to no other purpose than the payment of the costs of said improvements, and any

Sale of property for delinquent taxes.

Proviso.

Supplemental assessment.

Name: how used. bonds which may be issued as hereinafter provided, until the whole cost of said improvement, and all of said bonds, with interest, shall be fully paid and satisfied.

Tax bonds.

SEC. 4. For the purpose of paying the costs of the improvements mentioned and specified in section three hereof, and which costs are to be assessed and levied as aforesaid, upon the lots and lands as aforesaid, the council of any such city shall have power and may by ordinance cause to be issued bonds of such city, to be called "Improvement Bonds of District No. —," said bonds to be issued in four series, the first series in the aggregate to be for an amount not exceeding one fifth of the total cost of the expense of the opening, extending, widening, grading or other improvement as aforesaid of the particular street, highway, avenue or alley, to defray the cost at which said bonds are issued, and to be payable in not exceeding two years from date thereof; the second series to be for a like aggregate amount and payable in not exceeding four years from date thereof; the third series to be for a like aggregate amount and payable in not exceeding six years from date thereof, and the fourth series to be for a like aggregate amount and to be payable in not exceeding eight years from date thereof; all of said bonds to bear not exceeding six per cent. per annum interest, payable annually or semi-annually as said council may provide, with interest coupons attached, to express on their face the name of the street, highway, avenue or alley to defray the cost for which they are issued, and also that the last four installments of the special taxes and assessments assessed and levied or to be assessed and levied as aforesaid on the lots and lands abutting on the street, highway, avenue or alley so as aforesaid opened, extended, graded, or in

Name: provision for payment of. any other manner as aforesaid improved, shall be and constitute a sinking fund for the payment of said bonds and interest thereon, and to be used and appropriated to no other purpose until the whole of said bonds with interest thereon shall have been paid and fully discharged. Said bonds shall not be negotiated or sold

Name: to be sold at par. for less than their par value and may be respectively for amounts ranging from one hundred dollars to one thousand dollars as said council may provide by ordinance. The proceeds arising from said bonds shall be applied exclusively to and appropriated and used for no other purpose than the liquidation of the costs of the improvements as aforesaid to and upon the particular street, highway, avenue or alley, to defray the cost of which said bonds are issued.

City bonds, account exempt property, etc. SEC. 5. Whenever the council of any such city shall deem it expedient they shall have power for the purpose of paying the costs of opening, extending, widening, grading, paving, curbing, guttering, graveling or macadamizing spaces in front of city

property and of other property exempt from special taxation, the intersections of any streets, highways, avenues or alleys and the space opposite alleys, to issue bonds of the city to run for not exceeding twenty years and to bear interest payable semi-annually at a rate not exceeding 6 per cent. per annum, with coupons attached, to be called "City Improvement Bonds," and which shall not be sold for less than par, and the proceeds of which shall

Name: to be sold at par.

be used for no other purpose than paying for the cost of the improvements aforesaid and upon the particular streets, highways, avenues or alleys, the intersections of which and spaces opposite which are improved as aforesaid; *provided*, that no bonds can be issued to pay for any such improvements as aforesaid except when the same become a part of and are necessary to fully complete the improvements as aforesaid of any street, highway, avenue or alley undertaken to be made or made under section 3 hereof.

SEC. 6. All railway companies and street railway companies in cities of the first class as provided in section one of this act, shall be required to pave, or repave between rails and one foot outside of their rails, at their own expense and cost. Whenever

Railways to
pave between
rails.

any street, highway, avenue or alley shall be ordered paved or repaved by the council of any such city, such paving or repaving between and outside of the rails, shall be done at the same time and shall be of the same material and character as the paving or repaving of the street, highway, avenue or alley upon which said railway track is located, or of such other material as said council may order, and when said paving or repaving is done said com-

Railway com-
panies to use
flat rails, and
keep road bed
at grade.

panies shall lay in the best approved manner the strap or flat rail, such railway companies shall keep that portion of the streets, highways, avenues or alleys between and one foot outside of their rails, up to grade and in good repair, using for such purpose the same material with which the street, highway, avenue or alley is paved upon which the track is laid, or such other material as said council may order. In the event of the neglect or refusal of such railway companies to pave, or repave, or repair as aforesaid, when so ordered and directed as aforesaid by the council of such city, such city shall have power to pave, repave or repair between and outside of said rails as herein required of such railway companies, and the cost and expenses of the same to assess and levy as a special tax upon any of the real estate or personal property of such railway company, within the corporate limits of said city, which tax shall be a lien upon said property, shall become delinquent in sixty days after it is levied, shall draw interest at the rate of seven per cent. per annum, and said city shall have power

Where railway
companies re-
fuse to pave;
proceedings,
etc.

to enforce the payment of the same in the same manner and by the same means and with and under the same penalties as is provided herein with reference to special taxes upon the abutting property on the streets, highways, avenues or alleys, ordered to be improved as aforesaid, as hereinbefore provided.

112.

SEC. 469.

Action of the city or town in changing the grade, without taking the steps here provided for determining the compensation to be paid, is unlawful, and the owner of property injured thereby may maintain action at law to recover damages sustained: *Noyes v. Town of Mason City*, 53-418.

It is not the passage of an ordinance

changing the grade which gives right of action to the property owner, but it is the actual making of the physical changes which are therein contemplated; and where the street is cut down from curb to curb, the right of action for change in grade of sidewalk as well as for change in grade of street accrues, and a subsequent and separate action for injuries for the

grading of the sidewalk can not be maintained: *Hemstead v. City of Des Moines*, 18 N. W. Rep., 676.

If the value of the property has been increased by the change of grade after the lot is made to correspond therewith, the cost of filling the lot and raising the house should be taken into account in determining the damage. *Thompson v. City of Keokuk*, 61-187.

The grade of a street can only be established by ordinance. It is not dependent upon the actual lowering or raising of the surface. If the property owner erects buildings or otherwise improves his lots before such action is taken by the city council he can not recover for any changes in the surface of the street made after such improvement pursuant to grade lines established by the council, provided such changing of the surface be not negligently done: *Keppe v. City of Keokuk*, 61-653.

Where a city is proceeding to alter the grade of a street without assessment and tender of damages as here provided, a property owner who would be entitled to damages in case the alteration were made, may enjoin the same until proper proceedings have been taken: *Scott v. Council Bluffs*, 19 N. W. Rep., 672.

By the provisions of § 479, this section is applicable to cities under special charter, and while 16 G. A., ch. 116, refers especially to such cities, yet that statute does not repeal this section, and §§ 8, 9 and 10 of that act, relating to the same subject, are to be construed in connection herewith. Therefore the provision of this section requiring the damages assessed, to be paid or tendered before the alteration is made, is still applicable to such cities, although not contained in the later enactment: *Phillips v. Council Bluffs*, 19 N. W. Rep., 672.

114.

AFTER SEC. 470.

DONATION OF DEPOT GROUNDS TO RAILWAYS.

[Nineteenth General Assembly, Chapter 133.]

May procure and donate to railway sites for depots, shops, etc.

SEC. 1. It shall be lawful for any incorporate town or city to procure for the purpose of donating, and to donate, to any railway company owning a line of railroad in operation or in process of construction in such incorporated town or city, sufficient land for depot-grounds, engine-houses, and machine-shops for the construction and repair of engines, cars, and other machinery necessary to the convenient use and operation of said railroad.

Petition there for.

SEC. 2. Before such donation shall be made or appropriation of funds to procure land for such purpose, a petition shall be presented to the trustees or council of such incorporated town or city, signed by a majority of the resident freehold tax-payers of such incorporated town or city, asking that such donation be made and limiting the sum to be appropriated for that purpose. Upon the presentation of such petition, a special election of such city or town shall be called. On the ballots used at such election shall be printed the words, "for the donation" and "against the donation," and if a two-thirds majority of the qualified electors voting at such election shall vote for the donation, said trustees or council shall determine the site to be donated, designating the boundaries thereof, and the amount to be appropriated in procuring said site, not exceeding the amount named in said petition; and may in the name of such incorporated town or city procure said land by purchase, or by payment of the estimated damages in case said land or any part thereof shall be taken in the name of such railway company by process of condemnation for railroad purposes, and may also vacate any streets and alleys within the boundaries of said site and may prescribe the terms,

Election.

Action of council.

conditions, and limitations upon which such grant shall be made, which shall be binding upon the railway company accepting such donation: *Provided* that land set apart as a park, public square, or levee shall not be appropriated or donated under the provisions of this act, and no land occupied with buildings used for business purposes or as private residences shall be appropriated or donated under the provisions of this act, unless the consent of the owners thereof shall first be obtained.

RELATING TO PARKS.

[Twentieth General Assembly, Chapter 151.]

SECTION 1. Cities acting under special charters and cities and incorporated towns may provide by ordinance for the election of three park commissioners and the terms thereof shall be three, four and five years, respectively, and their successors shall be elected for the full term of five years, and such park commissioners shall reside in such city or town.

SEC. 2. Said park commissioners shall have exclusive control of such parks and shall manage, improve, and supervise the same.

SEC. 3. The councils of such cities and incorporated towns, may by resolution submit to the qualified electors of such city or town, at a regular or special election, the question whether there shall be levied upon the assessed property thereof a tax not exceeding two mills on the dollar, for the purpose of purchasing real estate for parks and the improvement of parks, or for either or both of said purposes.

SEC. 4. Said councils shall, in the resolution ordering such election, specify the rate of taxation proposed and the number of years the same shall be levied, and if a majority of the votes cast at such election shall be in favor of such taxation, said council shall levy the tax so authorized, which shall be collected and paid over to the treasurer of such city as other taxes thereof are collected, which shall be known as "Park Fund," and shall be paid on the order of the commissioners and to be expended for the purposes herein provided and for no other purpose whatever.

SEC. 5. Said commissioners may use said fund for improving such parks, or for purchasing additional grounds or laying out and improving avenues thereto, and do all things necessary to preserve such parks, and they may appoint one or more park policemen, and pay such police force out of said fund; said commissioners shall keep a full account of their disbursements, and all orders drawn on said fund shall be signed by at least two of said commissioners.

SEC. 6. Said commissioners shall each give a bond to the use of such city in the penal sum of five thousand dollars, before they shall be permitted to enter upon such duty, which bonds shall be approved by the auditor, recorder or clerk, of such city or town and by him retained in his office.

SEC. 7. It shall be deemed a misdemeanor for any person

Cutting, etc., a misdemeanor. to cut, break or deface any tree or shrub growing in any such park or parks, or avenues thereto, except by authority of such commissioners.

SEC. 471.

The fact that a water company, which has agreed to furnish water to the city for the extinguishment of fires, fails to do so, will not render it liable to an action by a property-owner for damages for the destruction of his property by reason of such failure, there being no privity of contract between the property owner and the company: *Davis v. Clinton Water Works Co.*, 54-59.

The fact that a city is authorized

to provide for a water supply, will not render it liable for failure to make adequate provision for the extinguishment of fires, nor would the fact that it had a contract with the water works company to protect it against all actions which might be brought against it for malfeasance or neglect on the part of the company, render it liable: *Van Horn v. City of Des Moines*, 19 N. W. Rep., 293.

115.

SEC. 474.

Cities may authorize the construction of such works by foreign corporations, and in such case they may confer upon such foreign corporation the power to condemn private property: *Dodge v. City of Council Bluffs*. 57-560.

117.

SEC. 478.

[20 G. A., ch. 20, makes special provision for the assessment and collection of taxes for improvements in cities of the first class, organized after January first, 1881; see that act in the supplement to page 111.]

This section makes the charges a lien upon abutting property, and it is not necessary that the ordinance shall so provide: *Kendig v. Knight*, 60-29.

SEC. 479.

The fact that an improvement is made on two streets, in pursuance of two different resolutions, but that in making the assessment the entire improvement on both streets is taken into consideration, does not render the tax illegal: *Kendig v. Knight*, 60-29.

The irregularity or defect which under this section can be disregarded, must be a mere error or omission to do something which in no manner affects the jurisdiction of the city. Unless jurisdiction has been acquired, the proceedings of the city will be void: *City of Chariton v.*

Holliday, 60-391.

The fact that the cost of the improvement is not assessed on the owner of the property in the manner provided by ordinance, is an informality which should be disregarded where it appears that after the improvement was made the cost was ascertained and the property owner notified of the amount due, and an opportunity was given him to pay it. Under such circumstances the formal assessment made against the property owner is not an essential requisite to a recovery: *Ibid.*

118.

SEC. 481.

[20 G. A., ch. 20, makes special provision for collection of improvement taxes in cities of first class organized subsequent to January first, 1881; see that act in supplement to page 111.]

While special assessments may be thus certified and collected, they are not subject to the penalties provided for non-payment of other taxes, but only to those provided by § 479: *Ankeny v. Henningsen*, 54-29.

119.

17 G. A., Ch. 162.

The city may create one sewerage district, comprising all its territory. An ordinance having been duly passed providing for the construction of sewers, the city may, by resolution, exercise the authority, and apply it to any particular sewer. A call of yeas and nays is not essential on passage of such resolution: *Grimmel v. City of Des Moines*, 57-144.

Although this statute does not require that notice of the assessment thereunder shall be given to property owners, yet such notice is an indispensable requisite to the exercise of the taxing power, and an ordinance providing for such assessments without notice and opportunity to the party assessed to appear and object

to the assessment on his property, is void: *Gatch v. City of Des Moines*; 18 N. W. Rep., 310.

Where a city had, prior to the passage of this act, levied a tax for, and commenced the construction of a sewer, which constitutes a main artery in the system of sewerage of the city, held, that it could not change the mode of paying for further improvements, and require the adjacent property to pay the whole expense thereafter to be incurred; and further, held that the legislature could not, by a legalizing act, render valid such improper action of the city: *Independent School Dist. of Burlington v. City of Burlington*, 60-500.

[20 G. A., ch. 25, amends this act by adding thereto the following sections:]

SEC. 9. In case the council of any city of the first class that has been or may be so organized since January first, 1881, shall assess the cost, in whole or in part, of the construction of sewers on adjacent property, it may, instead of making said special tax payable at the time of such assessment, levy the whole of such special tax on said property at one time, and provide by ordinance that the same shall become payable and delinquent as follows, viz: One-fifth in sixty days, one-fifth in two years, one-fifth in three years, one-fifth in four years, and one-fifth in five years after the levy is made. Said special tax shall be payable by the owners of the property on which it is levied at or before the time it becomes delinquent and in the installments hereinbefore mentioned, and shall be a lien upon the lots and lands so assessed and upon which it is levied, shall draw interest at the rate of seven per cent per annum from the time of the levy thereof until the same shall be paid or become delinquent whichever shall first happen. The payment of each and every installment of such tax may be enforced in the same manner, under the same penalties, and by the same methods as is provided in section three or section four of the act to which this is amendatory: *Provided*, however, that the sale of any property for the non-payment of any installment as aforesaid shall not be taken or construed as in any manner affecting the validity of the lien on the same for any installment thereof which may subsequently become delinquent. Said taxes shall constitute a sewerage fund for the payment of the cost of constructing sewers in front, rear or through the property upon which they are levied, and shall be used for and appropriated to no other purpose than the payment in whole or in part, as the case may be, of the cost of constructing said sewers so located or any bond which may be issued as hereinafter provided.

SEC. 10. Whenever any such city exercises the powers granted in section 9 hereof, it may, for the purpose of anticipat-

ing the collection of said special taxes, and it may for the purpose of anticipating the collection of any sewerage taxes it has power to levy under section 1 of the act to which this is supplementary, by ordinance cause to be issued its bonds, to be called "sewerage bonds"; said bonds to be issued in four series, each series, in the aggregate respectively, to be for an amount not exceeding the amount of special taxes, as provided in section nine hereof which become delinquent respectively in two, three, four and five years after their levy; and for such further amount as said city may propose to levy and have the power to levy for each of the respective years aforesaid under the provisions of section 1 of the act to which this is amendatory, on the property within the sewerage district in which said sewer or sewers are to be or have been constructed, the first series to be payable in not exceeding two years from the date of their issue; the second series to be payable in not exceeding three years from the date of their issue; the third series to be payable in not exceeding four years from the date of their issue; and the fourth series to be payable in not exceeding five years from the date of their issue; all of said bonds to bear interest not exceeding six per cent per annum, interest payable annually or semi-annually, as said council may provide, with interest coupons attached, to express on their face the name of the street, highway, avenue, or alley, on which the sewer is located, to defray the cost of which they are issued, and also that the last four installments of the special taxes assessed and levied as aforesaid on property abutting on the particular part of the street, highway, avenue or alley on which said sewer or sewers are located, as also the sewerage tax levied, or to be levied, on the property in the sewerage district to defray the cost of the particular sewer or sewers named as aforesaid in said bonds, shall be and constitute a sinking fund for the payment of said bonds and interest; and to be used and appropriated to no other purpose until the whole of said bonds, with interest, shall have been fully paid and discharged. Said bonds shall not be negotiated or sold for less than their par value, and may be respectively for amounts ranging from one hundred dollars to one thousand dollars, as said council may by ordinance provide. The proceeds arising from said bonds shall be applied exclusively to, and appropriated and used for, no other purpose than the liquidation of the costs of constructing the sewer or sewers upon the particular street, highway, avenue or alley, to defray the cost of which said bonds are issued.

120.

SEC. 482.

Where authority is given to a municipal corporation to pass ordinances, the violation of which is punishable by fine, or fine and imprisonment, the proceedings thereunder are necessarily criminal: *State v. Vail*, 57-103. As to general power to prescribe punishments, &c., see notes to § 456.

[Nineteenth General Assembly, Chapter 128.]

SEC. 1. Where any city or town, organized under the general incorporation laws of the state, shall cause, or have heretofore caused its ordinances to be published in book or pamphlet form,

Published ordinances received in evidence.

such book or pamphlet shall be received as evidence of the passage and legal publication of such ordinances, as of the dates mentioned or provided for therein, in all courts and places without further proof.

SEC. 487.

[19 G. A., ch. 32, repeals this section, and enacts the following in lieu thereof:

SEC. 487. All municipal corporations are hereby empowered to provide that all able-bodied male residents of the corporation between the ages of twenty-one and forty-five years shall, between the first day of April and the first day of September each year, either by themselves or satisfactory substitute, perform two days' labor upon the streets, alleys, or highways within such corporations, at such times and places as the proper officer may direct, and upon three days' notice in writing given. They may further provide that, for each day's failure to attend and perform the labor as required at the time and place specified, the delinquent shall forfeit and pay to the corporation any sum not exceeding three dollars for each day's delinquency, and in case of failure to pay such forfeit within ten days the supervisor of highways or street commissioner of said corporation shall recover the same by action in the name of the supervisor of the highways or street commissioner of said corporation; and no property or wages belonging to said person shall be exempt to the defendant on execution; said judgment to be obtained before the mayor of said corporation, or any justice of the peace in the proper township, which money when collected shall be expended upon the streets of the corporation; and that all such sums remaining unpaid on the first day of September in each year may be treated and collected as taxes on property, and the same shall be a lien on all the real property of the delinquent that may be listed for taxation, and assessed and owned by him on the first day of November of the same year.

SEC. 489.

[By 20 G. A., ch. 192, it is provided that in cities of not less than eight thousand inhabitants by the last census report, the mayor shall sign ordinances and resolutions before they shall take effect, except as they may be passed over his veto by vote of not less than two thirds of all the members of the council; see that act in supplement to page 130.]

It is not necessary that the yeas and nays on a vote to suspend the rule requiring reading on three different days be recorded; and where a sufficient number of members to suspend the rule appear to have been present, and such motion is declared adopted, it will be presumed that a sufficient majority voted therefor: *The State v. Vail*, 53-550.

An ordinance making provisions repugnant to a former one will operate to repeal it, though the former one be not contained in the latter: *City of Des Moines v. Hillis*, 55-643.

Where the title of an ordinance

absolutely prohibiting the sale of vinous and malt liquors was "Regulating the use and sale of intoxicating liquors," held, that the subject of the ordinance was not clearly expressed in the title, and that the ordinance was therefore void: *Town of Cantril v. Sainer*, 59-26.

By the expression "three different days," it is not meant that the ordinance must be read at three general meetings. If read on three different days it will be sufficient, although the last two meetings are special meetings by adjournment: *Cutcomp v. Utz*, 60-156.

124.

SEC. 493.

The requirement that the yeas and nays be called and recorded is mandatory, and unless the record affirmatively shows such fact, the ordinance will be invalid: *Town of Olin v. Meyers*, 55-209.

TAXATION OF PROPERTY WITHIN CITY OR TOWN FOR ROAD PURPOSES.

[Nineteenth General Assembly, Chapter 158.]

Property not subject to municipal taxes, liable to taxation for road purposes. SEC. 1. All property now subject to taxation in any city or town, which by law is not subject to taxation for general municipal purposes, shall, nevertheless, be liable to taxation for road purposes as may be provided by the council of such city or town, but not exceeding the rate of five mills upon the dollar of the assessed valuation thereof.

126.

SEC. 500.

[20 G. A., ch. 20, makes provision for issuance of improvement bonds by cities of first class organized subsequent to January first, 1881; see that act in supplement to page 111.]

A municipal corporation may issue bonds to a judgment creditor in payment of a judgment. Possibly such bonds would be invalid if given in excess of the limitation, even if given for the extinguishment of an antecedent and valid indebtedness; but in an action by the city against a third person who is liable to the city for the indebtedness which it thus attempts to pay, such invalidity of the bonds can not be set up to show that the city has not been compelled to pay such indebtedness: *City of Sioux City v. Weare*, 59-95.

16 G. A., Ch. 95.

[20 G. A., ch. 79, amends this act by striking out the words "four thousand five hundred" in the fifth and sixth lines, and inserting "three thousand five hundred."]

130.

AFTER SEC. 516.

FILLING VACANCIES IN OFFICES OF INCORPORATED TOWNS.

[Nineteenth General Assembly, Chapter 124.]

Council to fill. SEC. 1. Whenever, from death or other cause, a vacancy in the office of mayor, recorder, councilman, trustee, or other officer, in any incorporated town, shall occur, such vacancy shall be filled by the council of such incorporated town at the first regular meeting of such council after such vacancy shall occur, or as soon thereafter as may be.

By ballot. SEC. 2. The manner of filling such vacancy shall be by ballot, and the person receiving a majority of the votes of the whole number of the members elected to the council shall be declared duly elected to fill such vacancy, and, on duly qualifying, shall hold such office until the next annual election, and until his successor is elected and qualified.

SEC. 3. All acts or parts of acts inconsistent herewith are hereby repealed.

SEC. 518.

The action of the mayor in erroneously announcing that a resolution is not adopted, for the reason that it has not received a three-fourths vote, when a majority vote is all that is necessary, is not judicial in its character in such a sense that it can not

be called into question in a collateral proceeding. The erroneous, arbitrary announcement can not have the effect to nullify the act of the majority of the city council: *City of Charlton v. Holliday*, 60-391.

MAYOR TO SIGN ORDINANCES AND RESOLUTIONS.

[Twentieth General Assembly, Chapter 192.]

SECTION 1. The mayor of every city of the first and second class, except of less than eight thousand inhabitants by the last census report in this state, shall sign every ordinance or resolution passed by any city of the first or second class before such ordinance or resolution shall take effect or be in force.

SEC. 2. If the mayor of any city of the first and second class only as above excepted shall refuse to sign any ordinance or resolution after it has been passed by the council of such city he shall call a meeting of such city council within fourteen days after the passage of such ordinance or resolution and shall return the ordinance or resolution to them with his reasons for refusing to sign the same.

Sec. 3. Upon the return of the ordinance or resolution by the mayor to the city council they may pass the same upon a call of the yeas and nays by not less than two-thirds vote of all the members of said council over the mayor's veto and the clerk or recorder of such city shall certify on said ordinance that the same was passed by a two-thirds vote of the council and sign it officially as clerk or city recorder.

Sec. 4. But if any ordinance fails to obtain at least a two-thirds majority of all the council elected of such city after being vetoed by the mayor then such ordinance or resolution shall be void and of no effect.

131.**SEC. 521.**

[19 G. A., ch. 25, repeals all of this section after the word "year" in the twelfth line, and enacts in lieu thereof the following:]

In cities of the first class, the qualified electors of each ward shall, on the first Monday of March of the year 1882, elect by a plurality of votes, one member of the city council who shall at the time be a resident of the ward and a qualified elector thereof. And in the same year the qualified electors of cities of this class shall also elect two members at large of such city council, each of whom shall be a resident and qualified elector of the city in which he shall be elected. But in order that their term of service expire in different years, the council at the first regular meeting shall determine by lot which of the aldermen-at-large shall serve one, and which two years. The term of service of the other aldermen shall be determined in the same way, time, and manner; in cases where the number is uneven the majority shall serve one year. On the first Monday of March of each year there-

after the qualified electors shall elect for the term of two years one alderman-at-large and one in each ward where the term of their City embracing alderman expires: *Provided*, that when any city of the first class two townships¹ embraces within its corporate limits the whole or parts of two or more different townships, two of which townships or parts thereof contain one thousand electors each, that only one of the aldermen-at-large herein provided for shall be elected from any one of such townships or parts of townships.

133.

SEC. 525.

This section and section 418, so far as they relate to boards of health, are repealed by the act establishing a state board of health (18 G. A., ch. 151, § 18), inserted on page 451: *Staples v. Plymouth Co.*, 17 N. W. Rep., 569.

134.

SEC. 527.

As to the liability of the county for injuries resulting from defects in bridges which it is under obligation to maintain, see notes to section 303, paragraph 18.

136.

AFTER SEC. 533.

[Nineteenth General Assembly, Chapter 154.]

~~May erect jail.~~ SEC. 1. Any city of the second class shall have the power to erect and maintain a city jail, and to purchase the necessary grounds therefor, and to appropriate out of its general fund the amounts necessary for said purposes.

137.

AFTER SEC. 535.

[Twentieth General Assembly, Chapter 7.]

~~Mayor to appoint marshal.~~ SECTION 1. The mayors of cities of the first class organized under the general incorporation laws of the state and having a population of not less than twenty-two thousand and three hundred by the United States census of 1880 shall, subject to the approval of the city council, appoint a marshal who shall be ex-officio chief of police, and shall hold his office at the pleasure of the mayor. The marshal so appointed shall have all the powers conferred by the statutes of the state and ordinances of the city on the chief of police and the marshal, except the appointment of deputy marshals, and shall perform the duties of both offices. He may designate one or more members of the regular police force of the city to act as deputy marshals, and such designated policemen shall have all powers now conferred on deputy marshals.

~~Marshal's powers.~~

~~May appoint deputies.~~

~~Repealing clause.~~

SEC. 2. All acts or parts of acts in conflict herewith are hereby repealed.

SEC. 536.

Under 17 G. A., ch. 56, *held*, that a marshal having received salary under an ordinance in pursuance of that act, was estopped from also claiming fees: *Bryan v. City of Des Moines*, 51-690; and that it would make no difference that the officer had collected such fees and paid them into the city treasury under protest: *Christ v. City of Des Moines*, 53-144.

140.

16 G. A., Ch. 143.

The jurisdiction of the superior court over appeals from justices of the peace, as here provided, is not exclusive of that of the circuit court: *Hickox v. Nutting*, 55-403.

Such court has, as to cases originally brought therein, concurrent juris-

diction throughout the county. The limitation of jurisdiction to the township in which the city is located, applies only to appeals and writs of error from justices of the peace: *Winet v. Berryhill*, 55-411.

[This act is amended by the following:]

[Nineteenth General Assembly, Chapter 24.]

Be it enacted by the General Assembly of the State of Iowa.

SECTION 1. That chapter 143, of the acts of the Sixteenth General Assembly, be and the same is hereby amended as follows: By striking out of section 1 thereof the words "five thousand," in the first line of said section, and inserting in lieu thereof the words "eight thousand."

SEC. 2. That section 2 thereof be and the same is hereby amended by striking out the words "two-thirds," in the ninth line of said section, and inserting in lieu thereof the words "a majority."

SEC. 3. That section 6, of chapter 143, of the acts of the Sixteenth General Assembly, be and the same is hereby amended by adding to said section the following: "And parties may be committed to the city prison for confinement or punishment instead of the county jail, at the option of the judge: *Provided, however, that in the absence of the said judge, or in case of his inability to act, then during such time proceedings for the violation of city ordinances may be had before a justice of the peace residing in such city.*"

SEC. 4. That section 7 thereof be, and the same is hereby repealed, and that in lieu thereof the following be inserted:

SEC. 7. Changes of venue may be had from said court in all civil actions to the circuit court, and in all criminal actions to the district court, in the same manner, for like causes, and with the same effect as the venue is changed from the circuit court, as now or hereafter provided by law, unless it shall then appear upon the showing of either party that objections exist as to the circuit judge, in which latter case the change shall be made to the district court. In criminal actions an appeal will lie to the supreme court, as now or hereafter provided by law for appeal in like cases from the district courts.

SEC. 5. That section 14 be, and the same is hereby repealed, and that in lieu thereof the following be inserted:

SEC. 14. When causes are assigned for trial, any party desiring a jury shall then make his demand therefor, or the same shall be deemed to have been waived. Causes in which a jury

has been demanded shall be tried first in their order, and when a disposition shall have been made of such causes, the jury shall be discharged from further attendance at that term. No jurymen shall be detained longer than one week, except upon trial commenced within the first week of his attendance.

SEC. 6. That section 16 be, and the same is hereby repealed, and that in lieu thereof the following be inserted:

Sec. 16 amend-
ed; juries; how
constituted; how
costs.

SEC. 16. The jury shall consist of six qualified jurors, unless, when a jury is demanded as provided in section 3 of this act, the party at that time shall demand a jury of twelve, and in all civil cases the party requesting a jury of twelve shall at the time of making such demand deposit with the clerk the entire additional expense of the additional jurors, which sum shall be fixed by the court and paid to the clerk at the time of making such demand. If the judge shall deem proper, he shall cause a special venire to issue for said extra jurors, or for any number not exceeding twenty-four, or he may order the marshal to complete the same from the bystanders. The pay for all jurors shall be one dollar per day and mileage, to be taxed with the costs, which in all civil cases shall be paid by the county in the same manner as the circuit and district courts. All such deposits of additional expense for jurors shall be paid into the county treasury at the close of each term of such superior court, and the county treasurer shall give duplicate receipts therefor, one receipt to be held by said clerk, and the other to be presented by him to the county auditor, who shall charge the treasurer with the amount thereof in the proper account.

Sec. 17 amend-
ed.

SEC. 7. That section 17 be and the same is hereby amended as follows: By striking out all after the words "supreme court," in the fifth line.

SEC. 8. That section 18 be, and the same is hereby repealed, and that the following be inserted in lieu thereof:

Sec. 18 amend-
ed; judgments;
liens; trans-
cripts.

SEC. 18. Judgments in said court may be made liens upon real estate in the county in which the city is situated, by filing transcripts of the same in the circuit court, as provided in sections 3567 and 3568 of the code, relating to judgments of justices of the peace and with equal effect, and from the time of such filing it shall be treated in all respects as to its effect and mode of enforcement as a judgment rendered in the circuit court as of that date, and no execution can thereafter be issued from the said superior court on such judgment, and no real property shall be levied on, or sold on process issued out of the court created under the provisions of this act; and judgments of said superior court may be made liens upon real estate in other counties in the same manner as judgments in the circuit and district courts.

Sec. 20 amend-
ed.

SEC. 9. That section 20 be, and the same is hereby amended as follows: By striking out all after the words "district court," in the sixth line of said section.

Not to affect
proceedings
pending.

SEC. 10. This act shall not affect any action, suit or proceeding already begun and pending in any of said superior courts, but such action, suit, or proceeding shall be prosecuted and conducted after the taking effect of this act as nearly in conformity therewith as shall be practicable.

145.

17 G. A., Ch. 56.

This act is not unconstitutional as delegating legislative power to the city council, and the city may recover from the police judge fees received by him in criminal cases prosecuted in behalf of the state, whether received from defendants in such case or from the county: *City of Des Moines v. Hillis*, 55-643.

148.

SEC. 561.

Where a party filing a plat reserved therein the right to construct a mill race across one of the streets, *held*, that he become bound to erect and maintain a bridge across the race at his own expense: *City of Waterloo v. Union Mill Co.*, 59-437.

149.

SEC. 564.

The fact that the vacation of a portion of a plat will close streets therein, and thus abridge the number of ways of access to the property of the proprietor of another portion of the plat, will not be ground for objecting to such vacation, if one or more ways are left reasonably convenient, so that no substantial right is abridged: *Lorenzen v. Preston*, 53-580.

156.

SEC. 573.

[19 G. A., ch. 115, repeals this section, and enacts, in lieu thereof, the following:]

SEC. 573. The general election for state, district, county and township officers shall be held throughout the state on the second Tuesday of October in each odd-numbered year, and in each even-numbered year said general election shall be held on the Tuesday next after the first Monday of November.

157.

AFTER SEC. 586.

[17 G. A., ch. 51, after dividing certain judicial districts into two circuits each (see supplement to page 1166), provides as follows:]

SEC. 9. At the general election to be held in the year 1880, and every fourth year thereafter, there shall be elected a judge of the circuit court for each of the said first and second circuits by this act created, who shall hold his office for the term of four years, and until his successor is elected and qualified.

[Other sections of this act are inserted in supplement to page 38.]

[20th G. A., ch. 19, divides the sixth judicial district into two circuits: See the supplement to page 1166. It further provides as follows:]

SEC. 5. At the general election to be held in the year 1884 there shall be elected in the counties composing said first and second circuits as by this act created, and every fourth year thereafter a judge of the circuit court of each of said first and second circuits, who shall hold his office for the term of four years and until his successor is elected and qualified. The governor shall have the same authority to fill vacancies, and the same provisions shall apply with the same force and effect to any vacancies occurring in said first and second circuits by this act created, as now apply to vacancies in judicial circuits.

[Other sections of the same act, relating to the duties, etc., of the judges so elected, are inserted in supplement to page 38.]

[20 G. A., ch. 181, divides the fourth judicial district into two circuits: See the supplement to page 1166. It further provides as follows:]

Judge elected in 1884.

Must be a resident of the circuit.

Term of office.

SEC. 2. At the general election to be held in the year A. D. 1884 and every fourth year thereafter, there shall be elected in each of said judicial circuits, as aforesaid, by the qualified electors thereof, a circuit judge for each of said circuits, who shall be a resident of the circuit for which he shall be elected, and notice of the holding of said election shall be included in the proclamation of the governor relating to such general election.

SEC. 5. The term of office of each of the circuit judges provided for by this act shall commence on the first day of January, 1885, and continue for four years and until their successors are elected and qualified in accordance with the laws of the State relating to the election and qualification and term of office of circuit judges, who shall hold their office for a like term of four years.

[Other sections of the same act, relating to the duties, etc., of the judges so elected, are inserted in supplement to page 38.]

ADDITIONAL CIRCUIT JUDGES.

[Nineteenth General Assembly, Chapter 56.]

Additional circuit judge elected in certain circuits.

SECTION 1. Each judicial circuit of this state, wherein is situated a city containing a population in excess of twenty-two thousand and three hundred or more, by the United States census of 1880, shall, at the general election in the year 1882, and every four years thereafter, elect one additional circuit judge.

Terms of office of such judges.

SEC. 2. The term of office of said additional judges provided for by this act shall commence on the first Monday of January, 1883, and continue for four years, or until their successors are elected and qualified.

[The other sections of this act are inserted in supplement to page 38.]

[Twentieth General Assembly, Chapter 18.]

Additional circuit judge in second judicial district.

SECTION 1. The second judicial district of this state shall at the general election in the year 1884, and every four years thereafter, elect one additional circuit judge.

Term.

SEC. 2. The term of office of said additional judge shall commence on the first Monday in January, 1885, and continue for four years, or until his successor is elected and qualified.

[The other sections of this act are inserted in the supplement to page 38.]

158.

SEC. 593.

The ballots for justice of the peace | supervisors under the provisions of should be canvassed by the board of | § 634. *Lynch v. Vermazen*, 61-76.

165.

SEC. 631.

The board of supervisors and not | the peace. *Lynch v. Vermazen*, 61-76.
the township trustees have authority | to canvass the ballots for justice of

169.

ELECTION OF REPRESENTATIVES IN CONGRESS.

[Nineteenth General Assembly, Chapter 163.]

[Sections 1 to 12 inclusive divide the state into congressional districts, which are given on page 1166 a.]

SEC. 13. Each of the said districts shall be entitled to one representative in Congress, and the first election of members of Congress under this act shall be at the general election in the year one thousand eight hundred and eighty-two. Members of Congress shall be elected at the general election held every two years thereafter.

SEC. 14. The returns of elections for members of Congress under this act shall be made to the secretary of state; and the ^{Returns; can-} canvass shall be made by the board of state canvassers; which ^{vass.} return and canvass shall be made as required by law for the return and canvass of auditor of state.

173.

SEC. 680.

The want of approval of bond of visors does not invalidate the bond. county officer by the board of super- | *Moore v. McKinley*, 60-367.

174.

SEC. 690.

An officer when he enters upon a subsequent term, must be presumed, in the absence of evidence to the contrary, to have on hand all the funds with which he is chargeable, and proof of the amount which should have been on hand at that time will be *prima facie* proof that it was on hand. The fact that his bond is approved without his having produced and accounted for all funds and property, as here required, will not exempt his sureties from liability: *Dist. T'p of Fox v. McCord*, 54-346.

While it is held in *Boone Co. v. Jones*, 54-699, that a settlement with the county is conclusive upon the officer and his sureties, although the money produced as county funds is not so in fact but is merely procured for that purpose, and estops the officer and sureties from showing that the defalcation had taken place in the previous term (see note to § 913), yet if the certificate by the supervisors upon the bond, as here provided for, is made merely upon production of certificates of deposit, checks, etc., without any effort to ascertain whether they really represent money, it is not binding upon the sureties, and they may show that the defalcation had taken place prior to the giving of their bond. But the treasurer himself is estopped from showing that he did not have the money on hand as he represented he had, even though the board knew of his fraud and participated therein: *Webster Co. v. Hutchinson*, 60-721. This estoppel, however, does not apply in a criminal prosecution for embezzlement, and the treasurer may, notwithstanding his statements to the board, show that the embezzlement accrued during a previous term, and at such time as that the prosecution therefor is barred by the statute of limitations: *State v. Hutchinson*, 60-478.

The term for which an incumbent holding over is to occupy the office and qualify, is not a full term, but only until the vacancy can be legally filled by election: *Dyer v. Bagwell*, 54-487; *Boone Co. v. Jones*, 58-373.

Where a holding over officer executed a bond with sureties for the entire period of the term of the per-

son in whose place he held over under a mistaken belief that he was entitled to hold for the entire term of such officer, and at the next election was duly elected to fill the vacancy in such office, and executed a new bond. *Held*, that the sureties on the first named bond were not co-sureties with those on the second bond for the period subsequent to the last election, and could not be compelled to contribute for a defalcation occur-

ring during that time: *Boone Co. v. Jones*, 58-373.

The duty of an officer not to approve the bond until the person qualifying has accounted as required in this section, is a duty to the public only, and neglect thereof will not render such officer liable to the sureties on the new bond: *Hold v. Bagwell*, 58-139.

Surety is not liable for defalcation prior to the giving of the bond on which he becomes surety: *Ibid.*

175.

SEC. 692.

A promise by a candidate to pay into the public treasury, if elected, a part or all of the compensation allowed by law to the incumbent of the office for which he is a candidate,

is an offer of a bribe to the electors within ¶4 of this section: *Carrothers v. Russell*, 58-346.

To offer a bribe to an elector is a crime. See § 3993 and notes.

183.

SEC. 766.

[19 G. A., ch. 117, amends this section, by inserting after the words "land-office," in the third line, the words "clerk of the supreme court." The same act amends § 3771, which see.]

SEC. 767.

The provision that "in the absence or disability of the principal, the deputy shall perform the duties of the principal pertaining to his office," was designed rather to devolve and make imperative upon the deputy the duties of the principal in the absence or disability of the latter, and was not designed to withhold from the deputy the power to perform such

duties except in the absence or disability of the principal. The fact that such duties are performed by the deputy in the presence of the principal does not render the acts void: *Moore v. McKinley*, 60-367.

The sheriff is not bound by acceptance of service by his deputy: *Chapin v. Pinkerton*, 58-236.

187.

SEC. 784.

An officer who holds over after his term on account of a failure to elect a successor, only holds until the

vacancy in the office can be legally filled by election: *Dyer v. Bagwell*, 54-487.

SEC. 787.

Where an elective officer is appointed by the board of supervisors to fill a vacancy, he is not subject to removal by such board at pleasure, but is entitled under Const., Art. 11,

§ 6, to hold for the residue of the unexpired term unless removed for cause: *State ex rel. v. Chatburn*, 19 N. W. Rep., 816.

189.

15 G. A., Ch. 28.

[20 G. A., ch. 182, amends this act (as already amended by 18 G. A., ch. 13), by adding thereto the following:]

Submitting to
vote.

and provided further that the board of supervisors in any county to which these provisions do not apply, may at their discretion

order a vote of the electors of said county at any general election, and the electors of such county may by a majority vote thereof authorize the said board of supervisors to levy such tax.

SEC. 797.

[As to taxation of lands granted to railroads by general government or state, see 20 G. A., ch. 28, in supplement to page 194.]

The exemption of the property of a school district, used for school purposes, from taxation, extends only to general taxes, levied under this title of the Code, and does not exempt it from a special tax assessed by a municipal corporation for building sidewalks: *City of Sioux City v. Ind. Sch. Dist. of Sioux City*, 55-150.

Where a charitable society invested its "widows' and orphans' fund" in real property, which was leased for business purposes, the proceeds being strictly applied to the proper objects of the fund, held, that such property was not exempt from taxation: *Fort Des Moines Lodge, etc.*

v. *County of Polk*, 56-34.

A printer is a mechanic within ¶ 6 of this section, and the term "tools" there used may properly include the press, types, imposing stones, etc., necessary to carry on his business: *Smith v. Osburn*, 53-474.

The fact that a tract of forty acres is owned by a religious society, and one half acre in one corner thereof is used as a burying ground, while the remainder is used for farming purposes, is not sufficient to entitle the whole tract to exemption from taxation: *Mulroy v. Churchman*, 60-717.

191.

SEC. 798.

The exemption from taxation is not in the nature of a contract between the State and the property owner, and does not prevent subsequent legislation altering the law and removing the exemption. There-

fore, held that 18 G. A., ch. 190, limiting the amount of exemption under this section, was applicable to timber land planted before the passage of the act: *Shiner v. Jacobs*, 17 N. W. Rep., 613.

193.

SEC. 802.

Where the owner of a farm had made an executory oral agreement to convey the same at a future time, a part of the consideration being paid, the balance to be paid at the time of conveyance, held that the unpaid

purchase money was a credit within the meaning of this section, although a payment could not be demanded until conveyance was tendered: *Perrine v. Jacobs*, 19 N. W. Rep., 861.

SEC. 803.

Where the administrator is a resident of the same county where decedent died, but of another township, the personal property coming into

possession of the administrator should be assessed in the township where the administrator resides: *Cameron v. City of Burlington*, 56-320.

194.

AFTER SEC. 808.

TAXATION OF LANDS GRANTED TO RAILROADS.

[Twentieth General Assembly, Chapter 28.]

SECTION 1. All lands lying within the state of Iowa, which Land earned have been heretofore granted or may be hereafter granted to any but not railroad company or corporation by the general government or patented, taxed.

- Proviso.** by the general government to the state of Iowa and by the state granted to any such railroad company or corporation shall be subject to assessment and taxation within the counties wherein situated from and after the year the same may be earned, to the same extent as though patents had been issued to, and the title of record was in such railroad companies or corporations. The fact that such lands are claimed by more than one such company or corporation shall in no way affect the liability of such lands to assessment and levy, *provided*, nothing herein contained is intended to subject any lands to taxation for the past that were not taxable prior to the passage of this act.
- Evidence.** SEC. 3. [Sec. 2.] Parol evidence shall be admissible to prove when said lands were earned.
- Repealing clause.** SEC. 4. [Sec. 3.] All acts or parts of acts inconsistent with this act are hereby repealed.

195.

SEC. 812.

A tax based upon an assessment of personal property to the person owning the same at time of assessment, but who did not own it on January 1st preceding, is illegal, and its collection may be enjoined. Personal property brought into the state after January 1st is not taxable for that year: *Wangler Bros. v. Blackhawk Co.*, 56-384.

An assessment of moneys and cred-

its at any other place than the residence of the owner, is illegal and void: *Barber v. Farr*, 54-57.

The assessor is not required to examine each forty acre tract, but of necessity must arrive at the value from information derived from others, having regard to the elements of value prescribed by statute: *Beeson v. Johns*, 59-166.

SEC. 813.

Although the taxation of the property of a corporation to the corporation, and the shares of its capital stock to its stockholders, may amount

to double taxation, yet such a provision is not unconstitutional: *Cook v. City of Burlington*, 59-251.

197.

SEC. 818.

Although 15 G. A., ch. 60, § 28 (p. 319), provides another method for the taxation of savings banks, yet the difference in such methods of taxation as to savings banks and national banks does not constitute a

discrimination in taxation as against national banks, within the provision of § 5219 of the Revised Statutes of the U. S.: *Davenport National Bank v. Board of Equalization*, 19 N. W. Rep., 889.

198.

SEC. 821.

[By 20 G. A., ch. 70, § 3, the county auditor is to provide suitable columns, properly headed, in the assessor's book, for the listing of dogs: See that act in supplement to page 409.]

A description of property as the "N. W. part of the N. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ containing three acres," is

not sufficient to support a tax title: *Roberts v. Deeds*, 57-320.

199.

SEC. 822.

[By 20 G. A., ch. 70, § 1, the assessor is required to list dogs in the name of the owner thereof, without affixing any value: See that act in supplement to page 409.]

202.

SEC. 831.

Equity will not interfere to correct an over-assessment, and enjoin the collection of taxes thereon: *Powers v. Bouman*, 53-359. But where the assessment is void, as where personal property is assessed at some other place than that of its owner's residence, equity will entertain jurisdiction and enjoin the collection of the tax, and the party injured is not confined to an appeal to the board of equalization: *Barber v. Farr*, 54-57. The same rule applies where taxes are levied upon property exempt from taxation: *Smith v. Osburn*, 53-474.

On the trial of the appeal in the circuit court, the taxpayer is not entitled to a trial by jury, and on appeal

to the supreme court the case is triable *de novo*: *Davis v. City of Clinton*, 55-549; *Dunleith and Dubuque Bridge Co. v. County of Dubuque*, 55-558.

The amendment takes away the right of appeal in cases in which the sixty days had elapsed without any appeal being taken prior to the taking effect of the amendment: *Slocum v. Fayette Co.*, 61-169.

In case of an erroneous assessment, as for instance, where property properly assessable to a firm in one county is erroneously assessed to one of the partners in another county, the only remedy is by a proceeding before the board of equalization: *Harris v. Fremont Co.*, 19 N. W. Rep., 826.

205.

SEC. 839.

[By 20 G. A., ch. 70, § 2, the board is required to levy a tax upon dogs listed by the assessor, of fifty cents on each male and one dollar on each female: See that act in supplement to page 409.]

[By 20 G. A., ch. 200, § 1, the board of supervisors is authorized to levy a road tax of not exceeding one mill: See that act in supplement to page 246.]

SEC. 841..

Where it appeared that the assessment roll had been corrected by some one, and that as so corrected it had remained on file as a record in the auditor's office, and been regarded in subsequent proceedings as correct, *held*, that a party objecting to the correction as not made by proper au-

thority, had the burden of showing that it was incorrect and that the taxes assessed were inequitable or unjust, it appearing that unless covered by such correction the land had been entirely omitted from assessment: *Beeson v. Johns*, 59-166.

207.

SEC. 846.

[By 20 G. A., ch. 70, the treasurer is required to collect a dog tax at same time as other taxes, and keep the same as a separate fund to be paid out, as therein provided, on warrants issued by the auditor to persons whose claims for damages to domestic animals by dogs have been allowed by the board of supervisors: See the act in supplement to page 409.]

209.

SEC. 857.

[20 G. A., ch. 194, § 1, repeals this section and enacts in lieu thereof the following.]

Taxes; when due.

SEC. 857. No demand of taxes shall be necessary, but it shall be the duty of every person subject to taxation to attend at the office of the treasurer, unless otherwise provided, at some time between the first Monday in January and the first day of March following, and pay his taxes in full; or, he may pay the one-half thereof before the first day of March succeeding the levy and the remaining half thereof before the first day of September following; *provided*, that in all cases where the half of any taxes has not been paid before the first day of April succeeding the levy thereof, the whole amount of taxes charged against such entry shall become delinquent from the first day of March following such levy; and in case the second installment of any taxes be not paid before the first day of October succeeding its maturity, penalty shall be computed on such installment from the first day of September designating the maturity of such installment; *provided also*, that in all cases where taxes are paid by installment as herein provided, each of such payments, except road taxes, shall be apportioned among the several funds for which taxes have been assessed, in their proper proportions. And if any one neglect to pay his taxes at or before maturity, as herein provided, the treasurer may make the same by distress and sale of his personal property not exempt from taxation, and the tax-list alone shall be sufficient warrant therefor.

Proviso.

First install-
ment.

Second install-
ment.

Proviso.

Apportioned.

Collection by
distress and
sale.

The purchaser of land upon which | does not become personally liable the taxes are due and unpaid takes | therefor: *Ritchie v. McDuffle*, 17 subject to the lien of such taxes but | N. W. Rep., 167.

SEC. 859.

A person appointed under this sec- | to pay such additional compensation tion cannot recover from a private | in consideration of his remaining in person additional fees for services | office and performing the duties performed under an alleged contract | thereof: *Fawcett v. Eberly*, 58-544.

211.

SEC. 865.

A party buying at tax sale property | paid and becomes entitled to redeem covered by a school fund mortgage | from the school fund claim: *Ayres* acquires thereby a lien for the taxes | *v. Adair Co.*, 17 N. W. Rep., 161.

SECS. 865 and 866.

[20 G. A. ch. 194, § 1 repeals these sections and enacts in lieu thereof the following.]

Delinquent
taxes; a lien
drawing inter-
est.

Personal prop-
erty, tax on.
how collected.

SEC. 865. All taxes due and unpaid on the first day of March or the first day of September, shall become delinquent and draw interest as hereinafter provided; and taxes upon real property are hereby made a perpetual lien thereon against all persons except the United States and this state; and taxes due from any person upon personal property shall be a lien upon any real property owned by such person, or to which he may acquire a title; and the

treasurer is authorized and directed to collect the delinquent taxes by the sale of any property upon which the taxes are levied, or any other personal or real property belonging to the person to whom the taxes are assessed.

SEC. 866. The treasurer shall continue to receive taxes after they become delinquent until collected by distress and sale; and if the one-half of the taxes charged against any entry on the tax-book in the hands of a county treasurer be not paid before the first day of April after the same has been charged; or if the remaining half of such taxes has not been paid before the first day of October after its maturity, he shall collect, in addition to the tax of each tax-payer so delinquent, as penalty for non-payment, interest on such delinquent taxes, at the rate of one per cent per month thereafter until paid; *provided*, that in all cases where the half of any taxes has not been paid before the first day of April after the same has been charged on the tax-books, penalty as above shall be collected on the whole amount of taxes charged against such entry from the first of March succeeding the levy; and *provided also*, that the penalty prescribed by this section shall not apply upon taxes levied by any court to pay judgment on city or county indebtedness, but upon such taxes no other penalty than the interest, which such judgment draws, shall be collected; and *provided further*, nothing in this chapter shall be construed to alter the present rules governing the collection of road taxes, save that all such tax collected by the county treasurer shall be included in the first installment, and *provided further*, that the penalties provided by this section shall not apply to or be collected upon any taxes levied in aid of the construction of any railroad in this state.

212.

SEC. 870.

Where property was sold for an amount of tax, part of which was not a lien thereon, *held*, that the owner might recover from the county the amount of such tax, with costs, interest and penalties, which he was compelled to pay in order to redeem: *Brownlee v. Marion Co.*, 53-487.

Where title to land was for a long time in litigation between parties claiming title under conflicting grants, one of them paying the taxes, and it was finally decided that title was in the other, *held*, that the one who paid the taxes might recover the amount so paid from the one adjudged owner of the land (distinguishing the case from *Garraghan v. Knight*, 47-525): *Goodnow v. Moulton*, 51-555; *Same v. Wells*, 54-326; *Same v. Stryker*, 61-261.

And interest on the amount paid by the unsuccessful claimant of the land, at the legal rate of interest, may be recovered, commencing at the

date of payment: *Goodnow v. Litchfield*, 19 N.W. Rep., 226. But where the purchaser of property at execution sale makes redemption from a previous tax sale of the property he cannot recover from the former owner the amount paid; *Burr v. Patrick*, 59-134.

Morris v. County of Sioux, 42-416, followed: *Sears v. Marshall Co.*, 59-603.

It is the tax which has been illegally or erroneously exacted which is to be refunded. The money which is to be returned to the taxpayer is to be taken from the particular fund or funds into which it went when the tax was collected. No judgment can be rendered against a county on account of taxes illegally or erroneously collected for any of the public organizations or corporations for whose benefit the county treasurer collects taxes, without proof that there remains in the treasury, funds belong-

ing to such organization or corporation, which can properly be applied to the satisfaction of such judgment: *Iowa Railroad Land Co. v. County of Woodbury*, 19 N. W. Rep., 915.

Although a special tax cannot be refunded out of other taxes, yet where it was shown that their remained a sufficient amount in the treasury to refund to plaintiff the sum he was entitled to recover from the fund, the recovery was allowed to stand: *Dickey v. County of Polk*, 58-287.

Township road taxes collected and paid over to the township clerk cannot be recovered back from the county even though they have been illegally collected: *Stone v. County of Woodbury*, 51-522. But bridge taxes to

be collected and dispersed by the county constitute a part of the county funds and are not within the foregoing rules: *Dickey v. Polk Co.*, 58-287.

Where taxes are illegal, through erroneous action of the board in raising an assessment, they may be recovered back under this section; failure to pursue remedies to arrest the collection of the taxes will not waive or forfeit such right to recover them: *Ibid.*

This section is not applicable to a case of erroneous assessment made in the exercise of lawful authority; the only relief in such case is by application to the board of equalization under § 831: *Harris v. Fremont Co.*, 19 N. W. Rep., 826.

213.

SEC. 871.

[20 G. A., ch. 194, § 2, amends this section by striking out the word "October" where it occurs in the first line of said section and in lieu thereof inserting the word "December."]

While a mere stranger has not the right to pay taxes, yet if payment be made by such an one, and received by the treasurer, the property can not be afterward sold for such tax: *Iowa R. Land Co. v. Guthrie*, 53-383.

The word taxes in this section must be construed to mean state and county taxes, and not to include railroad taxes, and a second sale for

railroad taxes is legal: *Crowell v. Merrill*, 60-53.

It appearing that there were three bidders at a tax sale, and that they did not bid against each other, and this being the only evidence of a fraudulent combination, held, that it was not sufficient and that fraud could not be presumed: *Beeson v. Johns*, 59-166.

214.

SEC. 873.

[20 G. A., ch. 194, § 3, amends this section by striking out the word "September" wherever it occurs in said section and inserting in lieu thereof, the word "November."]

215.

SEC. 876.

Where the bid was for fourteen acres of a certain tract, and the notice of expiration of redemption and the tax deed followed the same de-

scription, held, that the notice and deed were void for uncertainty: *Poindexter v. Doolittle*, 54-52.

216.

16 G. A., Ch. 79, § 1.

[20 G. A., ch. 194, § 6, amends this section by striking out the word "October" where it occurs in the second line of said section and inserting in lieu thereof, the word "December."]

Under this act the owner in making redemption must pay the amount due on the real estate at the time of sale, and that amount must be re-

garded as the full amount of interest, taxes, penalties and costs as provided by the existing law: *Soper v. Espezel*, 19 N. W. Rep., 232.

218.

SEC. 883.

[20 G. A., ch. 194, § 4, amends this section by striking out the word "October" where it occurs in the tenth line of said section and inserting in lieu thereof, the word "December."]

219.

SEC. 887.

The owner of the certificate may | trespass: See §§ 3343, 3344.
recover treble damages for waste or |

220.

SEC. 889.

The purchaser cannot pay taxes for | thereby compel the owner, in redem-
years previous to the sale which have | ing, to pay such taxes: *Sheppard*
not been included in the amount for | v. *Clark*, 58-371.
which the property was sold, and |

SEC. 890.

[19 G. A., ch. 45, amends this section by striking out the word "twenty," in the sixth and tenth lines and inserting in lieu thereof the word "ten," and contains also the following:]

Provided, that this act shall not affect sales already made, or penalties upon taxes hereafter paid upon sales made before the taking effect of this act.

221.

SEC. 891.

One in possession of property under color of title is entitled to redeem: *Foster v. Bowman*, 55-237.

A tenant in common who desires to redeem may be required to redeem the entire property, and having made such redemption he may recover from his co-tenants the amount paid for such redemption of the co-tenants' share: *Hipp v. Crenshaw*, 17 N. W. Rep., 660.

Where a party buys land at execution sale which has been sold for taxes, he cannot, after making redemption, recover the amount so paid from the former owner: *Barr v. Patrick*, 59-134.

When one seeks to redeem from a tax sale under an equity or a claim not based upon a recorded title, which the law provides shall support the right of redemption, the county offi-

cers must permit the redemption if they are satisfied he in good faith relies upon such equity or claim. They are not to determine whether the law will enforce his claim, but whether in good faith he makes it; such claim, however, or equity, must pertain to an interest in the land, which if enforced, will vest some title, lien or right to the property itself. The county officers cannot exercise judicial functions and cannot determine questions of title of this kind. Moreover, in cases wherein the county officers are authorized and required to permit redemption, the courts will allow and enforce the right. It can not be possible that in a case wherein the officers would be required to permit redemption, the courts would deny the right: *Cummings v. Wilson*, 59-14.

222.

SEC. 892.

Redemption by guardian may be made before the execution of the deed, as provided in § 890, or after the execution of the deed, by equitable

action: *Witt v. Mewhirter*, 57-545. This section simply prescribes when the right to bring action shall terminate, but does not provide that the

action can only be brought during the year after the minor comes of age. It may be brought by the guardian or the minor, before the latter attains his majority: *Ibid.*

As to limitation of action by minor to redeem, see § 902 and notes.

Where the rights of a minor in the property sold are acquired after the sale, whether by conveyance or descent, the time for redemption is not extended: *Stevens v. Cassidy*, 59-113.,

SEC. 893.

Corning Town Co. v. Davis, 44-622, followed in a somewhat analogous case: *J. F. & S. C. R. Co. v. Storm Lake Bank*, 55-696.

This section contemplates a full equitable adjustment of the rights of the parties, and rents and profits, as well as claims for improvements, are to be taken into consideration. Where such rents and profits had been more than sufficient to repay all the taxes, interest and penalties which the law imposes, held, that the owner was entitled to have his title quieted against the holder of the tax title without further redemption:

Strang v. Burris, 61-3.

In a particular case where a party claimed the right to redeem in equity from a tax deed on the ground of certain unsuccessful offers to make redemption before the expiration of the time, consisting of visits to the auditor's office, which was found closed, etc., held, that the fact that twenty-six days elapsed after the making of such offer, and before the expiration of the time for redemption, without further steps being taken, precluded equitable relief: *Harrison v. Owens*, 57-314.

SEC. 894.

Knowledge of publication of notice will not obviate the actual service of notice in cases where the latter is required by statute: *Reed v. Thompson*, 56-457. But where the notice and proof of service on their face are regular, and a deed is issued in accordance therewith, the burden of overthrowing this *prima facie* evidence is upon the person attacking the deed: *Wilson v. Crafts*, 56-450.

The deed is at least *prima facie* evidence of the proper giving of notice, and the party attacking a deed for want of service of the notice here required upon the owner, must show that the land was assessed to some owner by name, and not to an unknown owner: *Fowler v. Armstrong*, 53-693.

Where the bid on which a forty acre tract of land was sold was for "fourteen acres" thereof, and the notice under this section so described it, held, that the notice was void for uncertainty in the description: *Potndexter v. Doolittle*, 54-52.

A treasurer's deed issued before expiration of ninety days from the filing of an affidavit of service of notice is invalid: *Scope v. Prior*, 58-412; *Cummings v. Wilson*, 59-14.

Where a deed is void because prematurely issued, the surrender and cancellation of the certificate is also void, and the certificate has the same force and effect as though it had

never been surrendered. If thereafter proper notice is given, or the party is prevented by an injunction at the suit of the owner to whom notice would be given, from giving such notice, the time of redemption will expire ninety days from the giving or attempting to give such notice: *Long v. Smith*, 17 N. W. Rep., 579.

The affidavit herein required to constitute completion of services must be by the holder of the certificate, his agent or attorney. An affidavit by the proprietor of the paper in which the notice was published is not sufficient: *American Missionary Association v. Smith*, 59-704; *Ellsworth v. Cordrey*, 16 N. W. Rep., 211.

An affidavit of the holder of the certificate that publication was made for three consecutive weeks, but which did not state when the publication was made, held, not sufficient: *Ellsworth v. Cordrey*, 16 N. W. Rep., 211.

Evidence in a particular case held sufficient to justify the court in finding that the tax register showed, when examined by the agent or owner before making redemption, that the affidavit required by statute was filed at such a date as to make his redemption proper: *Ellsworth v. Green*, 59-622.

Where a timber lot not suitable for cultivation is used by a person in

such way as such land is ordinarily used, he is to be deemed in possession, and is to be served with notice: *Ellsworth v. Low*, 17 N. W. Rep., 450.

Where at the time of the service of notice the land was listed and assessed for taxation to a purchaser of the same holding by a deed not recorded, and the assessor's book so showing was in the auditor's office, held, that notice must be served upon him

although the land was still in possession of his grantor, upon whom notice was properly served: *Weaton v. Knight*, 16 N. W. Rep., 532.

A party cannot, by assigning possession of the property on which he holds a certificate and then collusively assigning his certificate to another, have valid notice served upon himself which shall entitle the assignee to a deed: *Cummings v. Browne*, 61-385.

225.

SEC. 897.

The sale and deed convey the interest of the state and county in the property, but not the tax itself, and a tax purchaser is not entitled to recover from the owner the tax paid, where the sale and deed, owing to defective description, are void: *Roberts v. Deeds*, 57-320.

The acknowledgment is essential to the validity of the tax deed; and a defect therein is not cured by a general act (such as Code § 1967) legalizing defective acknowledgments of deeds: *Goodykoontz v. Olsen*, 54-174.

The tax deed is not conclusive evidence of the giving of notice of expiration of time of redemption, under § 894. The "notice" of which this section makes the deed conclusive evidence is notice of sale: *Reed v. Thompson*, 56-455. Where such notice and proof of service appear on their face to be regular, and a deed is issued in accordance therewith, any person asserting the invalidity of the deed, upon the ground that the service was not made as the proof shows, or that the person served was not the right person, has the burden of overcoming the *prima facie* evidence furnished by the papers: *Wilson v. Crafts*, 56-450.

A deed for "fourteen acres of" a certain forty acre tract offered for sale, held, void for uncertainty of description: *Poindexter v. Doolittle*, 54-52.

Defective description in assessment and tax books, and deed, cannot be cured by extraneous evidence: *Roberts v. Deeds*, 57-320.

A tenant in common cannot, by purchase at tax sale, cut off the interest of his co-tenants: *Shell v. Walker*, 64-386.

Where the treasurer, in pursuance of a proposition made by a party

before the sale opened, to take all lands not sold to others, made out certificates to such party after the sale was completed, there being no bids, such party not being present nor represented, and paying no money, but simply issuing receipts of the railroad company for whose benefit the tax was originally voted, held, that there was no sale, and that an innocent purchaser, under a tax deed issued in pursuance of such transaction, would not be protected, the principle decided in *Van Shaack v. Robbins*, 36-201, and *Sibley v. Bullis*, 40-432 not being applicable: *Truesdale v. Green*, 57-215.

A tax deed acquired by a tenant in common is not sufficient in equity to divest the interest of a co-tenant, even though the holder of the deed may have acquired the tax certificate before becoming tenant in common: *Tice v. Derby*, 59-312.

A party charged with the payment of taxes as agent can not acquire a tax title to his principal's land, and under the facts of a particular case, held, that the party acquiring tax title was the agent of the owner, and therefore that his title was void: *Ellsworth v. Cordrey*, 16 N. W. Rep., 211. But held, that the purchase of such agent at the tax sale was not void, but voidable; that the right and claim of the state and county to the taxes passed to him and his assignee, and that the owner seeking to evade the title, should pay to him the same amount he would have had to pay the treasurer in case the taxes had not been paid by the claimant under the tax title: *Ibid.*

A person who is not in possession of real estate, but who claims title thereto under a void tax deed, can become a purchaser at a subsequent tax sale, procure a treasurer's deed

and thereunder claim title: *Neal v. Frazier*, 19 N. W. Rep., 309.

Where a party seeks relief from a tax title under which the purchaser has procured a deed, and is in possession, such redemption will be allowed only upon payment of a sum sufficient to pay all taxes, if they had not been paid by the purchaser: *Thode v. Spofford*, 17 N. W. Rep., 561.

The rule stated in *Everett v. Beebe*, 37-452, as to amount to be paid by the party who seeks in an equitable action, to redeem from a tax deed, does not apply to the case where a party seeks, by equitable action, to be allowed to redeem from an illegal sale before the tax deed is issued thereon. The treasurer's certificate of sale does not vest in the purchaser the title and interest of the state and county; the amount which plaintiff should be required to pay in such a case is the taxes which the owner was legally bound to pay, with six per cent interest: *Roberts v. Merrill*, 60-166.

It is a sufficient compliance with the provision of this section, requiring that before a tax deed can be set aside or redemption therefrom allowed, it must appear that the taxes due upon the property have been paid by the person seeking to redeem, that the party acting for the plaintiff made a tender of the amount and offer to pay the taxes due on the

land in controversy to the county auditor after the treasurer's deed was executed, and in his petition offers to pay whatever amount is found due: *Weaton v. Knight*, 16 N. W. Rep., 532.

No objection to the validity of the tax title, can, after the expiration of five years from the time of sale, be made on the ground that the deed shows upon its face that several tracts of land were sold for a gross sum: *Monk v. Corbin*, 58-503.

Where property was sold for a city tax claimed to have been levied fourteen years prior, and it did not appear upon the book of delinquent taxes which the city had adopted as a standard, held, that the city must be considered as having abandoned such taxes, and that the tax title was void: *Bradley v. Hinrager*, 61-337.

One asserting title under a tax deed has but to introduce it in evidence and the law puts upon his adversary the burden of showing its invalidity. He will not be guilty of fraud in asserting title under it, only as he has actual knowledge that it is invalid, or introduces it in evidence with intent to accomplish some unlawful purpose: *Brownell v. Storm Lake Bank*, 19 N. W. Rep., 788.

As to recovery by person whose title, after long litigation, has been declared invalid, of taxes paid by him pending such litigation, see notes to § 870.

230.

SEC. 902.

This limitation applies only as between the tax purchaser and the owner at the time of the sale, or one deriving title from such owner. Where one not the owner, and having mere color of title, goes into possession, there is no reason why the holder of the tax title should not have the same time as the holder of any other valid title to test the right of the occupant. (Supplemental opinion.) *Lockridge v. Daggett*, 54-332.

Where the land sold is and remains unoccupied, the tax title carries with it constructive possession, and after the lapse of five years becomes absolute: *Zent v. Picken*, 54-535.

The grantee of a minor has only five years from his purchase of the property to bring the action: *McCaughan v. Tatman*, 58-508.

The extension of time for bringing the action in favor of the minor, does not operate to the benefit of the purchaser as against such minor, and such purchaser must bring any action on his tax title within five years from the execution and recording of his deed: *Ibid.*

As to redemption by minor, see § 892.

The fact that the deed was executed and recorded more than five years before the commencement of the action, does not constitute a valid objection to the introduction of the deed in evidence. Whether the party gains possession under such deed depends upon whether or not the owner of the patent title was in possession at the date of the expiration of five years from the execution of the deed: *Monk v. Corbin*, 58-503.

Possession of land necessary to bar

an action under a tax title, is not required to be of the adverse, hostile and exclusive character required under the general statute of limitations. Its validity depends not so much on the extent and character of the improvements on the land as on the possession which would enable the holder under a tax title to commence his action for the land: *Griffith v. Carter*, 19 N. W. Rep., 903.

The change in the language of this section from that of the corresponding section of the Revision, as to when the period of limitation commences

to run, was merely the adoption of the judicial construction put upon the law as it was contained in the Revision: *Ibid.*

Although the limitation as against the holder of a tax deed commences to run from the time he became entitled to his deed, the same rule does not apply as against the owner, and if he asserts his right to the land by taking possession within five years from the recording of the deed, the action by the holder of the tax title is barred: *Ibid.; Cassaday v. Sapp*, 19 N. W. Rep., 909.

231.

SEC. 905.

The stub of a redemption certificate is admissible in evidence under this section: *Ellsworth v. Low*, 17 N. W. Rep., 450.

234.

SEC. 914.

[20 G. A., ch. 194, § 5, amends this section by striking out the word "March" where it occurs in the seventh and eighth lines thereof, and inserting the word "April"; also, further amends said section by striking out the word "November," where it occurs in the ninth line of said section, and inserting in lieu thereof the word "December"; also by striking out the words "first day of November," where they occur in the tenth line of said section, and in lieu thereof inserting the words "tenth day of December."]

By the same act it is provided (§ 7) that "all acts and parts of acts, so far as inconsistent with this act, are hereby repealed." It is further provided (§ 8) that "this act shall take effect and be in force on and after the second Monday of November, A. D. 1884."

236.

SEC. 921.

Although the road is established by the auditor, and is less than sixty-six feet in width, if the record of his action is read over to and approved by the board, such action becomes substantially the action of the board, and is proper: *State v. Barlow*, 61-572.

There is no presumption that a highway originating by prescription is of the width here required for a highway laid out by the state. The width of such highway is a question of fact for the jury to determine from the facts and circumstances. The court cannot, as a matter of law, say

what the road acquired by prescription or use is of any particular width beyond such portion as is actually used by the public: *Davis v. City of Clinton*, 58-389.

A road supervisor may be enjoined from erecting a bridge at the side of the highway where it will cause injury to a hedge of an adjoining land owner, and render necessary the destruction of shade trees in front of his premises, when it might, with some additional expense, be constructed in the middle of the highway without causing such damage: *Quinton v. Burton*, 61-471.

SEC. 922.

A petition will not be insufficient to give the board jurisdiction, merely because it runs to the county auditor, who is the clerk of the board, instead of to the board itself, or because it does not expressly ask for the

establishment of the road, when its object is abundantly evident, in that it states that the road is needed and asks for the appointment of a commissioner: *State v. Barlow*, 61-572.

SEC. 923.

If the auditor allows the petition to be filed without a bond, and proceeds to act upon it, his action cannot be said to be without jurisdiction, the provision in regard to a bond being simply directory: *State v. Barlow*, 61-572.

237.

SEC. 927.

A report against a road by the commissioner is an official determination, and the application cannot be considered as longer pending: *Morgan v. Miller*, 59-481.

238.

SEC. 934.

[19 G. A., ch. 80, amends this section by inserting after the word "highway," in the third line, the words "*shall report the number of bridges required, if any, and the probable cost thereof on the proposed highway.*"]

Where an auditor set a day for final hearing one day beyond the limit here fixed, and afterward, in a proceeding to enjoin the road supervisor from opening the road so laid out, there was a trial involving the validity of the road, and the opening of the same was perpetually enjoined, held, that the same was a binding adjudication that no road had ever been established: *Dicken v. Morgan*, 59-157.

SEC. 936.

[19 G. A., ch. 109, amends this section by inserting after the word "thence," in the eleventh line, the following words: "*Giving the names of the owners of the land through which the proposed road passes, as they appear upon the transfer books of the auditor's office.*"]

239.

SEC. 937.

In order to enable the auditor to act, it is not necessary that there be filed formal proof of publication of the notice required by the preceding section; his determination that notice has been duly published, while not

conclusive, is sufficient to cast upon any one questioning his action, the burden of proving want of publication: *Pagels v. Oaks*, 19 N. W. Rep., 905.

240.

SEC. 940.

Where, upon failure of one of the appraisers to meet with the others on the day fixed, they adjourned instead of filling his place, held, that in the absence of any proof of prejudice

caused thereby, the proceedings would not be treated as erroneous upon a review by certiorari: *Johnson v. Board of Supervisors of Clayton Co.*, 61-89.

SEC. 946.

Upon a writ of certiorari from the proceeding of the board, it is not proper to review its decision upon the question whether the public interests demand a proposed road, or whether it is practicable and expedient to es-

tablish it. The circuit court can only determine whether the board is proceeding within its jurisdiction or not: *Tiedt v. Carstensen*, 61-334.

Where the highway, as laid out, was the only means of access to the

residence of plaintiff, it was held that it should properly be considered a public highway, even though he were the only person benefited thereby, and himself objected to its establishment as a highway. It is not a citizen's right to render himself inaccessible, and a road which is the only one between a citizen and the public may properly be deemed a public road: *Johnson v. Board of Supervisors of Clayton Co.*, 61-89; *Page v. Oaks*, 19 N. W. Rep., 905.

Where a *certiorari* proceeding is instituted against the board of supervisors, calling in question their action in establishing a highway, and such action is held to be illegal, the costs should be taxed, not against the board, but against the petitioners for the highway: *Teidt v. Cars-tensen*, 19 N. W. Rep., 885.

242.

SEC. 959.

Where the notice is served within twenty days, and the only objection is as to the sufficiency of proof of

such service, an appearance and objection to the service confers jurisdiction: *Libby v. McIntosh*, 60-329.

243.

SEC. 962.

The damages herein referred to must be estimated with reference to the extent of the interest of the claimant in the property from which the ap-

propriation is to be made, and the claimant must therefore allege and prove the extent of his interest: *Costello v. Burke*, 19 N. W. Rep., 247.

244.

SEC. 964.

The board cannot vary the line of road as originally surveyed to conform it to a way acquired by prescription. The alterations referred to in this section have reference to such changes in the road as have occurred by orders or surveys made after the original survey, and which tend to such confusion that the location of the road is not accurately defined or pointed out by the record:

Blair v. Boesch, 59-554. But it is competent for the board to hear evidence as to where the original survey was actually made, and being satisfied from the evidence that the resurvey is upon the line as originally surveyed, to approve and confirm such survey, although it does not conform to the original field notes: *Ibid.*

245.

SIDEWALKS ON HIGHWAYS.

[Twentieth General Assembly, Chapter 147.]

SECTION 1. It shall be lawful for any owner of land adjoining or abutting on a public road or highway outside the limits of any city or town, to build and construct a sidewalk on and along said highway for his own use and for the use of the public traveling on foot; said sidewalk shall not exceed four feet in width and shall be located along the side of the highway and may be constructed of any material suitable for a foot walk, provided, that said sidewalk shall not be so constructed as to interfere with the proper use and enjoyment of any lands or premises along which it passes, and provided further, that the persons building such walk shall keep the same in repair, and shall be liable for all injuries occasioned by his failure to keep the same in repair.

Landowners may construct sidewalks along any public road.
Proviso: shall not interfere with use of lands.
Persons building, liable for injuries.

SEC. 2. Any person who shall destroy, injure, or drive or ride upon a sidewalk, so constructed or heretofore, constructed except at highway crossings, shall be deemed guilty of a misdemeanor and shall be fined not less than five dollars for each offense, and shall be liable to the party who has built or maintained said sidewalk for all damages.

Penalty for injury of sidewalk.

246.

SEC. 969.

As incorporated towns are given power to provide for grading and repair of their streets (§ 465), they must have control over such streets, and the road supervisor and township trustees have no authority over them: *Clark v. Incorporated Town of Epworth*, 56-462.

SEC. 970.

The trustees have no authority to contract indebtedness for the purchase of tools and machinery, until a tax is levied and set apart for that purpose. "Indebtedness previously contracted," in the preceding section, does not refer to such indebtedness for tools and machinery. The trustees may, after the tax is levied and set apart, anticipate the collection of the tax and purchase tools and machinery upon credit: *Wells v. Grubb*, 58-384; *Hanks v. North*, 58-396; *Revolving Scraper Co. v. Tuttle*, 61-423.

The clerk might maintain an action for funds belonging to his township, in the hands of third persons. If he deposits such funds in his individual name, without notice to the banker of their character, such act

amounts to a conversion; the deposit belongs to the clerk individually, and if seized by garnishee process under attachment on his individual debt, without notice of its character, cannot be recovered back as public funds: *Long v. Emsley*, 57-11.

The township clerk is the proper party to bring an action against a road supervisor for monies received by him belonging to the general township fund which he fails to pay over: *Wells v. Stombach*, 59-376.

And it seems that in such case the clerk might sue on the supervisor's bond: *Kellogg v. Bare*, 17 N. W. Rep., 666.

[19 G. A., ch. 158, relating to taxation of property within a city or town, for road purposes, is inserted in supplement to page 124.]

ROAD TAXES.

[Twentieth General Assembly, Chapter 200.]

SECTION 1. The board of supervisors of each county may, at the time of levying taxes for other purposes, levy a tax of not more than one mill on the dollar of the assessed value of the taxable property in their county, which tax shall be collected at the same time and in the same manner as other taxes are collected and shall be known as the county road fund, and shall be paid out only on the order of the board of supervisors for work done on the highways of the county, in such places as the board shall determine, and the county treasurer shall receive the same compensation for collecting this tax as he does for collecting corporation taxes; *Provided*, that the amount levied by the board of township trustees under section 969 of the code together with the amount thus levied shall not be in excess of five mills.

One-mill tax authorized in each county.

Paid out for work on highways.

Proviso: total tax not to exceed 5 mills.

SEC. 2. The board of supervisors shall, at their regular meeting in April of each year, determine from the auditor's and treasurer's books, the amount of money collected and credited to

said road tax fund. They shall, also, determine the manner in which said tax shall be expended, whether by contract or otherwise.

[Sec. 3 provides a substitute for Code § 986, and is inserted in supplement to page 250.]

SEC. 4. The board of township trustees, may, at their regular meeting in April, 1884, or at any regular April meeting thereaf-^{Township trustees may con oldate road districts}ter, on petition of a majority of the voters of said township con-^{solidate}solidate the several road district[s] in the township into one highway district: *Provided*, however, that nothing herein contained shall be construed to prevent the trustees from again subdividing the township into subdistricts and returning to the present plan of road work, at any regular April meeting, after two years trial of the plan provided by this act.

SEC. 5. The trustees may order the township highway tax for Tax may be the succeeding year paid in money and have the same collected ordered paid by the county treasurer the same as other taxes.

SEC. 6. In all cases where the township shall have organized When organ-into one highway district, as contemplated in section 4 of this act,ized into one highway dis-trict.
the board of township trustees shall order and direct the expendi-ture of all the highway funds and labor belonging or owing to the township; and to this end the trustees may let by contract to the lowest responsible bidder (should they deem him competent to the proper performance of such work) any part, or all of the work on the highways for that year, in the township, or they may ap-point a township superintendent of highways, with one or more assistants, should they deem it best so to do, to superintend all or any part of such work, subject always to the direction of the township trustees; *provided only*, the said trustees shall not incur any indebtedness for such purposes, unless the same has been, or shall at the time be, provided for by an authorized levy.

SEC. 7. The trustees shall cause both the property and poll Expenditure road tax belonging to the township, to be equitably and judi-ciously expended for highway purposes in the township highway of tax.
district, and shall cause the highways to be kept in as good condi-tion as the means at their command will admit of.

SEC. 8. The trustees shall cause the noxious weeds growing on Noxious weeds the highways in their township, to be cut twice a year, if deemed necessary to exterminate the same, and have them cut at such times as to prevent their growing to seed; and for this purpose, the trustees may allow any land owner a reasonable compen-sation for destroying such weeds on the highways abutting his lands and have him credited for the same on his road tax for that year.

SEC. 9. The trustees shall fix the term of office and per diem of the superintendent of highways and his assistants, should such be employed; *provided*, the superintendent shall not be hired for Trustees to fix more than one year at a time and his per diem shall not exceed and per diem three dollars; and that the contract shall be conditioned so that of superin-tendent.
the trustees may dispense with his services at any time, when in Proviso.
their judgment it shall be for the best interests of the township so to do.

75 per cent of tax to be expended. —

Funds of the several districts to be placed to credit of general township.

Township clerk, contractor and superintendent, to qualify and give bond.

Compensation of trustees, of county treasurer,

of township clerk.

Nine hours constitute a day's work.
Proviso.

Law as to highway supervisors shall apply to contractors.

Trustees to designate when township system takes effect.

Secs. 4 to 15 hereof apply when.

Repealing clause.

SEC. 10. The trustees shall cause at least seventy-five per cent of the township highway tax to be properly expended for highway purposes by the fifteenth day of July each year.

SEC. 11. In all cases where the one highway district plan shall be adopted, the highway funds belonging to the several road districts in the township, prior to the change, shall be placed to the credit of the general township highway fund, and all claims for work done or material furnished for road purposes, and unsettled for prior to the change, shall be paid out of such funds.

SEC. 12. The trustees shall require the township clerk, contractor, and superintendent, contemplated in this act, each to qualify, as other township officers, and to execute a bond with approved sureties, for twice the amount of money likely to come into their hands, respectively, by reason of this act.

SEC. 13. The trustees shall receive the same compensation per day for time necessarily spent in looking after the highways, as they do for other township business; the county treasurer shall receive the per cent for collecting the highway taxes contemplated in this act that he does for collecting corporation taxes; and the township clerk shall receive two per cent of all the money coming into his hands by reason of this act, and by him paid out for road purposes.

SEC. 14. Nine hours' faithful service for a man, or man and team, shall be required for a day's work on the road; *provided*, that except on extraordinary occasions no person shall be required to go more than three miles from his place of residence to work on the roads; and for the purposes of this act, the residence of a man with a family shall be construed to be where his family reside[s], and for a single man it shall be at the place where he is at work.

SEC. 15. The powers, duties, and accountability imposed on highway supervisors, so far as consistent with this act, shall apply with equal force to contractors, superintendents and assistants contemplated in this act.

SEC. 16. In all cases where the one highway district for the township shall have been adopted, it shall be competent for the township trustees to designate when the same shall take effect as to the working of the roads.

SEC. 17. Sections four to fifteen inclusive, of this act shall apply and be in force only in such townships as adopt the one highway district plan provided for in this act.

SEC. 18. All acts and parts of acts so far as inconsistent with this act are hereby repealed.

249.

SEC. 981.

A road supervisor who fails to pay over the proportion of the road taxes collected by him, which has been by the trustees apportioned to the general fund, is liable therefor in an action on his bond, although he may have expended for road purposes all the money collected by him: *Wells v. Stomback*, 59-376.

SEC. 984.

[20 G. A., ch. 200, § 14, supersedes this section to some extent: See that act inserted in supplement to page 246.]

250.

SEC. 986.

[20 G. A., ch. 200, § 3, repeals this section, and enacts the following in lieu thereof:]

SEC. 986. The supervisor shall be allowed the sum of two Compensation dollars per day for each day's labor, including the time necessarily of road supervisor spent in notifying the hands and making out his return, which sum shall be paid out of the highway fund, after deducting his How paid. two days' work. When there is no money in the hands of the clerk with which to pay the said supervisor, he shall be entitled to receive a certificate for the amount of labor performed, which Receive a certificate: when certificate shall be received in payment of his own highway tax for any succeeding year.

[Other sections of this act are inserted in supplement to page 246.]

251.

SEC. 989.

Shade trees at the side of the highway, should be permitted to way, which do not interfere with stand: *Quinton v. Burton*, 61-471. travel if the road is in the center of

255.

AFTER SEC. 1010.

TOLL-BRIDGES OVER STREAMS DIVIDING COUNTIES.

[Twentieth General Assembly. Chapter 13.]

SECTION 1. Boards of supervisors in adjoining counties each Board of supervisors may purchase. of which contains according to the last census a population exceeding 10,000 inhabitants shall have authority to purchase and acquire any toll-bridge erected across any stream dividing said counties at the place said bridge is erected and keep and maintain at joint expense free. that the total cost of such bridge shall not exceed the sum of Cost limited. \$10,000.

SEC. 2. If said boards of supervisors are able to agree upon Proceedings where boards of supervisors agree. the terms upon which they will purchase such bridge and the proportion each will pay towards the purchase and maintenance agree. of the same, such agreement shall be reduced to writing signed by the respective chairmen and recorded in the records of their proceedings. But if they are unable to thus agree the county Proceeding where boards are unable to agree. desiring to purchase said bridge may institute a special proceeding in the circuit court of either of said counties, and said cause shall be conducted as an equitable cause and the court shall determine whether there is any public necessity for said bridge the relative benefit the same will be to the two counties and based Finding of upon such benefit the proportion each county shall bear in the purchase and maintenance of said bridge, and shall enter decree accordingly, either or both parties having the right of appeal to Right of appeal. the supreme court. Upon entering of a decree in favor of the purchase of such bridge it shall be the duty of said respective Completion of boards of supervisors at once to proceed to complete the purchase purchase.

Tax levy for purchase. upon such terms as are determined on and to forthwith levy the necessary taxes to make the payments and said counties shall thereafter keep and maintain such bridge and be responsible for the safe condition thereof as provided by law.

261.

18 G. A., Ch. 74, § 9.

[20 G. A., ch. 65, § 1, amends this section by striking out the word "nine" and inserting in lieu thereof the word "six."]

SEC. 11.

[19 G. A., ch. 175, § 1, provides that the reports of the adjutant-general shall be made to the governor, biennially, on or before the 15th day of August preceding the regular sessions of the general assembly: See that act in supplement to page 28.]

262.

SEC. 13.

[20 G. A., ch. 65, § 2, amends this section by striking out, in the first sentence, the words "not less than," and the words "nor more than ten."]

264.

SEC. 21.

[20 G. A., ch. 65, § 4, amends this section by inserting after the words "as ordered by the commander-in-chief" the words "and for the time spent in such encampment each soldier and officer shall receive as compensation therefor the sum of \$1.50 per day, to be paid under such provisions as the commander-in-chief may direct."]

267.

SEC. 45.

[20 G. A., ch. 65, § 3, amends this section by striking out all of said section after the words "with a view to disbandment."]

268.

SEC. 51.

\$15,000 additional annual appropriation [20 G. A., ch. 65, § 5, is as follows:]
SEC. 5. For the purpose of carrying out the provisions of chapter 74, laws of the 18th general assembly as herein amended, there is hereby made the additional appropriation of fifteen thousand dollars per annum, or so much thereof as may be necessary, out of any money in the state treasury not otherwise appropriated, and all warrants against said appropriation shall be drawn by the auditor of state upon the state treasurer upon the certificate of the adjutant general approved by the governor.

270.

SEC. 1061.

[20 G. A., ch. 22, amends this section by adding thereto the following proviso:]

Provided, That the provisions of this section shall not apply to the bonds or other railway securities to be hereafter issued or guaranteed by railway companies of this state, in aid of the location, construction and equipment of railways, to the amount of

not exceeding sixteen thousand dollars per mile of single track, standard gauge, or eight thousand dollars per mile of single track, narrow gauge, lines of road for each mile of railway actually constructed and equipped.

SEC. 1063.

Where the articles of incorporation did not state the principal place of business, or the time of commencement of business, *held*, that the publication of such articles was not sufficient notice, and that there was such failure to comply with this section as to render the stockholders individually liable under §1068: *Clegg v. Grange Co.*, 61-121.

271. .

SEC. 1069.

Whether the provisions of this section as to renewal, are applicable to such corporations as are described in § 1091 *quare: Byers v. McCarty*, 17 N. W. Rep., 571.

274.

SEC. 1082.

Although the subscribed capital stock of a corporation is a fund held by it in trust for its creditors, yet this rule can have no application to a case where it is shown that in a transaction, untainted with fraud and without prejudice to creditors, stock has been issued to parties having a valid claim against the company at a small per cent. of its par value, and accepted by them in full payment of their claims, its actual value being less than that at which it is thus accepted: *Louisa Co. National Bank v. Traer*, 16 N. W. Rep., 120.

The fact that a subscription for stock was to be paid in property instead of money does not relieve the subscriber from liability, if the property was not turned over as agreed.

The company can not by any arrangement or action upon its part release the subscriber from his liability: *Singer v. Giren*, 61-93.

The subscriber can not, as between himself and the creditor, set up claims for services, or for use of property, for which the corporation is indebted to him: *Ibid.*

Whether the stockholder can be made liable until judgment has been rendered against the corporation or not, the statute of limitations as affecting the action against such stockholder cannot be enlarged on account of any failure or delay in obtaining judgment against the corporation: *First Nat. Bank of Garrettsville, O., v. Greene*, 17 N. W. Rep., 86.

SEC. 1083.

The fact of demand and refusal may be shown by the official return upon the execution. Such return, as between the corporation and the creditor, must be regarded as conclusive. Evidence may be introduced

to show that no such return was made, but it is not competent to dispute it by showing that no demand was made as therein stated: *Singer v. Given*, 61-93.

SEC. 1084.

This section contemplates the rendition of a judgment against the stockholder, and not merely the

awarding of an execution against him: *Singer v. Given*, 61-93.

275.

SEC. 1089.

The estoppel provided for under this section certainly applies only to a body of men acting as a corporation

for pecuniary profit. Whether the section can be applied to persons acting as a corporation other than for

pecuniary profit query: *Kirkpatrick v. Unit'd Presbyterian Church of Keota*, 19 N. W. Rep., 272.

Among acts which would constitute acting as a corporation herein provided for, would be the adoption and use of a corporate seal, the taking of subscriptions and the issue of certificates of stock; but the acts of persons as members of a religious society in holding business meetings, and acquiring property, receiving and paying out money, appointing agents to make settlements, etc., held, not

sufficient to constitute such "acting as a corporation;" also held, that the passage of by-laws is not an assumption of distinctive corporate powers; nor is the attempt to incorporate: *Ibid.*

When a corporation seeks to enforce the bequest in a will, duly admitted to probate, its claim cannot be resisted on the ground that it has not been legally organized. Such objection can be taken only by a proceeding by *quo warranto*: *Quinn v. Shields*, 17 N. W. Rep., 437.

18 G. A., Ch. 208.

The provisions of the constitution, Art. 8, § 9, rendering stockholders in a banking corporation or institution individually liable to an amount equal to their respective shares, is

held to apply only to banks of issue, and not to banks merely of discount and deposit: *Allen v. Clayton*, 18 N. W. Rep., 663.

276.

SEC. 1091.

Whether the provisions of § 1069, as to renewal of corporations, is applicable to corporations such as here-

in specified, *quare*: *Byers v. McCartney*, 17 N. W. Rep., 571.

277.

SEC. 1097.

The civil courts will not revise the decisions of churches or religious associations upon ecclesiastical matters, but will interfere with the action of such associations when rights of property or civil rights are involved: *Bird v. St. Mark's Church of Waterloo*, 17 N. W. Rep., 747.

278.

SEC. 1101.

The words "such institution" here used refer to the associations named in § 1091; and such associations, whether incorporated or not, cannot take by will more than one-fourth of the estate of a testator who leaves a wife, child, or parent: *Byers v. McCartney*, 17 N. W. Rep., 571.

280.

SEC. 1109.

Such societies may offer a premium to the winner at a horse-race held on its grounds during its annual fair. Sec. 1114, prohibiting gambling and horse-racing, does not apply to races controlled by the society: *Delier v. Plymouth Co. Ag'l Soc'y*, 57-481.

282.

SEC. 1121.

[20 G. A., ch. 128 amends this section by striking out of the first line thereof the words "one thousand" and inserting in lieu thereof the words "twenty-five hundred."]

PUBLICATION OF PROCEEDINGS OF IMPROVED STOCK BREEDERS' ASSOCIATION.

[Twentieth General Assembly, Chapter 134.]

SECTION 1. The annual proceedings of the Iowa State Association of Improved Stock Breeders of which C. F. Clarkson is president and Fitch B. Stacy is secretary, including the accepted essays and addresses, together with the report of discussions, is hereby authorized and directed to be printed by the state, under the supervision of the association, as the reports of the state agricultural and horticultural societies are now published.

SEC. 2. The number of copies to be so published shall be limited to five thousand annually, not exceeding three hundred pages each, all of which shall be bound in pamphlet form. They shall be distributed as follows:

To the governor, lieutenant governor, secretary of state, auditor of state, state treasurer, each member of the general assembly, the state horticultural society, the state agricultural society, the state library, the Iowa state university and the Iowa state agricultural college, each twenty copies. To each county auditor to be kept in the office, to each public library, to each incorporated college in the state, to each president and secretary of each county and district fair, and to each president and secretary of each dairymen's or stock growers' association, two copies; the remainder to be distributed under the direction of the association.

Annual proceedings to be published by the state.

5,000 copies.
No. of pages
and binding.

Distribution.

297.

SEC. 1160.

[20 G. A. ch. 11, amends the substitute, 17 G. A., ch. 104, by inserting after the words "fire or death" in the fourth line, the words "or loss or damage by tornadoes, lightning, hail storms, cyclones or wind storms."]

Mutual aid associations fall within the provisions of this section and not within those of the three follow-

ing: *State ex rel. Auditor v. Iowa Mutual Aid Association*, 59-125.

301.

SEC. 1161.

This and the following sections do not apply to mutual aid associations organized to afford financial aid and benefit to the families of deceased members, and assistance to members personally in case of sickness or disability. The payment of member-

ship fees, dues and assessments alone being required, and no permanent fund for any other purpose being accumulated, such associations are within the provisions of §1160: *State ex rel. Aud. v. Ia. Mut. Aid Ass'n* 59-125.

306.

SEC. 1172.

In an action under this section, to close the business of a corporation for failure to comply with provision of chapter 5, title 9 of the Code, it must be assumed that the corporation was duly organized: *State ex rel. Auditor v. Iowa Mutual Aid Association*, 59-125.

308.

SEC. 1182.

The proceeds of the life policy are assets of the estate, and only differ from other assets in the manner of their distribution: *Kelley v. Mann*, 56-625.

This section contemplates a case where the policy is payable to deceased, or his legal representative,

and not a case where it is payable to another, for the use and benefit of such other; in this latter case, it cannot be otherwise disposed of by will: *McClure v. Johnson*, 56-620.

Smedley v. Felt, 43-607, followed: *Murray v. Wells*, 53-256.

310.

SEC. 1186.

Hawkeye Benefit, etc., Ass'n v. Burlington Mutual Loan Ass'n v. Hei-Blackburn, 48-385, followed: *Bur-der*, 55-424.

319.

15 G. A., Ch. 60, § 28.

The capital stock to the extent that it is invested in U. S. bonds, is not taxable: *German Am. Savings Bank v. City of Burlington*, 54-609.

324.

SEC. 1207.

[This section as amended by 16 G. A., ch. 140, § 1, is further amended by 19 G. A., ch. 44, § 1, by inserting the word "levees" after the word "constructed," in the third line.]

SEC. 1208.

[This section is amended by 19 G. A., ch. 44, § 2, by inserting the word "levee" before the word "ditch," in the eleventh line, and also in the twenty-second line.]

325.

SEC. 1209.

[This section is amended by 19 G. A., ch. 44, § 3, by inserting the word "levee" before the word "ditch," wherever the latter occurs in said section.]

SEC. 1210.

[This section as amended by 16 G. A., ch. 140, § 2, is further amended by 19 G. A., ch. 44, § 4, by inserting the word "levee" before the word "ditch," in the second line.]

SEC. 1211.

[This section is amended by 19 G. A., ch. 44, § 5, by inserting the word "levee" before the word "ditch," in the second line.]

SEC. 1212.

[This section, as amended by 16 G. A., ch. 140, § 1, and by 18 G. A., ch. 85, § 8, is further amended by 19 G. A., ch. 44, § 6, by inserting the word "levee" before the word "ditch," where it occurs in the ninth, and also in the fourteenth line, and the words "levee or" before the words "drainage fund," in the seventeenth line.]

326.

SEC. 1214.

[This section, as amended by 16 G. A., ch. 140, § 4, is further amended by 19 G. A., ch. 44, § 7, by inserting the word "levee" before the word "ditch," in the sixth line; by inserting the words "and cause said levees to be repaired" after the words "re-opened and repaired," in the thirteenth line; by inserting the word "levees" before the word "ditches," in the sixteenth line, and by inserting the words "or any interference with such levees" after the word "water-courses," in the twentieth line.]

Vicinity, as used in this section, does not mean adjoining to or abiding on, but near by, close by, or neighboring country. The board being vested with the power to determine what land in the vicinity should be assessed, has a large discretion | as a local tribunal and may assess one parcel of land more, another less, and others not at all, and from the action of the board in this respect, no appeal is provided for: See notes to §1216: *Lambert v. Mills Co.*, 58-666.

327.

SEC. 1216.

[This substitute is amended by 19 G. A., ch. 44, § 8, by inserting the word "levee" before the word "ditch," in the fourth line.]

No appeal from an action of the board in assessing the cost of the improvement upon land in the vicinity | is provided for in behalf of the party whose land is assessed: *Lambert v. Mills Co.*, 58-666.

17 G. A., Ch. 121.

[Sections 1 and 2 of this act are amended by 19 G. A., ch. 44, §§ 9 and 10 respectively, by inserting the words "levee or" before the word "drain," wherever it occurs.]

18 G. A., Ch. 85.

[This act is amended in each section by 19 G. A., ch. 44, § 11, by inserting the word "levee" before the word "ditch," wherever it occurs; and § 5 thereof is further amended by inserting the words "levee or" before the word "drain," in the fourth line.]

328.

DRAINS, LEVEES AND CHANGES IN WATER COURSES.

(Twentieth General Assembly, Chapter 186.)

SECTION 1. Ditches or drains may be located and constructed within the limits of any public highway, and on either or both sides thereof, and levees or embankments upon and along the same; provided, they are so constructed as not to prevent public travel thereon. The engineer or commissioner appointed to locate ditches, drains, levees or embankments, may recommend the establishment of a public highway upon and along the route of the same, and the board of supervisors may establish the same on such recommendation in the same manner as on the report of a highway commissioner. All levees built by taxation under the drainage laws shall be under the control of the board of supervisors of the county in which they are situated, and the board shall have the power to grant the right of way thereon to any railway company that will maintain the same while used for railway purposes: provided, the steps for condemnation and payment therefor, contained in chapter 4, title 10, of the code, shall first be complied with.

Ditches or drains in public highway.
Levees and embankments Proviso.
Engineer can recommend public highway, when.
Board of supervisors may establish.
What levees are under control of board of supervisors.
Proviso: Chap. 4, Title 10, compiled with.

Proviso: not be taken by said company; *provided further,* that nothing in this kept at expense section shall be construed so as to require such ditches or levees of county. — to be kept up at the expense of the county.

SEC. 2. Whenever the petition of one hundred legal voters 100 voters peti- of the county, setting forth that any body or district of land in tion on over said county, described by metes and bounds, or otherwise, is sub-flowed lands. ject to overflow, or too wet for cultivation, and that in the opin-ion of petitioners the public health, convenience or welfare, will

Bond filed with be promoted by draining or leveeing the same, and also a bond, auditor: he conditioned as required by section 1208 of the code, shall be filed shall appoint an engineer. with the county auditor; he shall appoint a competent engineer Duty of engi- or commissioner, who shall proceed to examine said district of neer. lands, and if he deem it advisable to survey and locate such ditches, drains, levees, embankments and changes in the direc-tion of water courses as may be necessary for the reclamation of such lands or any part thereof, and he shall make substantially the

Report of pro- same report and the same proceedings shall be had as now pre-ceedings. — vided by law for the location and construction of ditches, drains and changes in water courses, and two or more counties may unite in such work of reclamation in the manner now provided by law.

SEC. 3. If the board of supervisors shall be of opinion that the Board of super-estimated cost of reclamation of such district of lands is greater visors to deter than should be levied and collected in a single year from the mine amount lands benefited, they may determine what proportion of the same each year. should be levied and collected each year, and they may issue Bonds and rate drainage bonds of the county bearing not more than eight of interest. per cent annual interest, and payable in the proportion and at the times when such taxes so apportioned will have been collected, and may devote the same at par to the payment of such work as it progresses, or may sell the same at not less than par, and devote the proceeds to such payment; and should the cost of such work

Where cost ex-exceed the estimate, a new apportionment of taxes may be made ceeds estimate. and other bonds issued and used in like manner; but in no case No bond to run shall any such bonds run longer than fifteen years, and at least longer than 15 ten per cent in amount of those issued on the first estimate shall yeas.

Land may be be payable annually. The board of supervisors may divide the divided. land to be benefited into drainage districts, which shall be ac-

Denomination curately described and numbered, and such drainage bonds shall of bonds. be in sums of not less than fifty dollars each, and shall be num-bered consecutively and issued as other county bonds are, and shall specify that *that* they are drainage bonds, and designate by its number the drainage district on account of which they are is-sued. And in no case shall the amount of bonds issued exceed

Not to exceed 50 per cent of value of land. fifty per cent of the value of the lands in such drainage districts as shown by the last assessment for taxation.

SEC. 4. It shall be the duty of the board of supervisors to Tax to pay levy each year on the lands benefited a tax sufficient to pay the bonds as here- interest on such bonds and so much of the principal as falls due in provided, levied each in the succeeding year, and such tax shall be collected in the year. How collecte. same manner as other county taxes, and shall be carried to the credit of the drainage district on account of which the bonds are issued, and shall be used to pay the principal and interest of

said bonds as the same falls due: *provided*, that any surplus may ^{Proviso.} be devoted to payment of works of reclamation in said district or repairs thereof.

UNDERGROUND DRAINS.

[Twentieth General Assembly, Chapter 188.]

SECTION 1. Whenever any person shall desire to construct ^{Application} any tile or other underground drain through the land of another, ^{for drain to be filed with} and shall be unable to agree with the owner or owners of such township clerk. land as to the same, he may file with the clerk of the township where said land is situated an application therefor, giving a description of the land or lands through which he may desire to construct same, and the township clerk shall forthwith notify the ^{Duty of clerk} township trustees of said township of said application, who shall fix a time and place for the hearing of same, which time shall not be more than twenty days distant, and they shall cause said clerk to notify the applicant and land owner of the time and place of said hearing at least five days before the time fixed for the hearing of same, which notice shall be in writing, signed by said clerk, and shall be served on said applicant and land owner, ^{How served.} if within the county, and if not, then upon his agent for said land, if within the county, in the same manner as is now provided by law for the service of original notices, and in case that neither said party nor his agent are residents within said county, then the same shall be served by posting written notices in three public places in said township, one of which shall be upon said land, at least ten days before said hearing.

Sec. 2. Upon the day fixed for hearing, if said trustees ^{How tried.} are satisfied that the provisions of the prior section have been complied with, they may proceed to hear and determine the same, and shall have power to adjourn from time to time until same is completed; *provided*, that no adjournment shall be for more than fifteen days.

Sec. 3. The said trustees may fix the point or points of entrance and exit or outlet of said tile or other underground drain on said land, the general course of same through said land, the size and depth of same, when the same shall be constructed, how kept in repair, what connections may be made with same, what compensation, if any, shall be made therefor, and any other question arising in connection with same; and they shall reduce their findings to writing, which shall be filed with the clerk of said township, who shall record it in full in his book of records of said township, and said finding and decision shall be final, except as ^{Findings shall be in writing} ^{as to damages.}

Sec. 4. Wherever any water course or natural drainage line crosses the boundary line between two adjoining land owners and both parties desire to drain the land along such water course or natural drainage line, but are unable to agree upon the conditions as to the juncture or connection of the lines of tile or other drainage at the boundary line aforesaid, then and in such case the township trustees shall have full authority to hear and determine all questions arising relative thereto ^{Water-courses and natural drainage lines} to be.

- tween such land owners and to render such judgment thereupon as shall to them seem just.**
- Can go upon public highways.**
- SEC. 5. Any person shall have the right to go upon any public highway to construct an outlet to a drain, provided he shall leave the highway in as good condition as it was before the drain was constructed, to be determined by the supervisor of highways in the district where the work is done.**
- When railroad is concerned it shall be notified.**
- SEC. 6. Whenever any railroad crosses the land of any person or persons who desire to drain their land for any of the purposes set forth in section 1 of this act, the party or parties desiring such drain or drains shall notify the railroad company by leaving a written notice with the nearest station agent, stating in such notice the starting point, route and termination of such drain or drains, and if the railroad company refuse or neglect for the space of thirty days to dig across their right of way a drain of equal depth and size of the one dug by the party who wishes to drain his land, then the party who desires to drain the land may proceed to dig such drain and the railroad company shall be liable for the cost of the construction of such drain, to be collected in any court having jurisdiction.**
- Right of appeal.**
- SEC. 7. Either party may appeal to the circuit court of the county from so much of said finding and order as relates to the amount of damages which may be awarded, within the same time and in the same manner as to bond, conditions of bond and notice of appeal, as is now provided by law in cases of appeal from assessment of damages on location of highways; provided, however, that said appeal shall not delay the construction of said tile or other underground drain if the applicant shall in case the land owner appeal[s] deposit with the township clerk for the use of said land owner the amount of damages awarded by the trustees, and in case the applicant appeals that he shall first file the appeal bond provided by law.**
- In case of appeal, duty of clerk.**
- SEC. 8. In case of appeal the township clerk shall certify to the circuit court a transcript of the proceedings before said trustees, which shall be filed in said court with the appeal bond, the party appealing paying for said transcript and the docketing of said appeal as in other cases, and upon appeal the party claiming damages shall be plaintiff and the applicant defendant, and upon appeal the same shall in all respects, as far as applicable be governed by same rules as appeals from assessments for damages for location of highway on appeal.**
- Applicant to pay costs and damages.**
- SEC. 9. The applicant shall pay the costs of the trustees' clerk and serving of notices on the hearing before the trustees, and in case no appeal is taken, shall pay all damages awarded before entering on the construction of said tile or other drain through the lands of the other.**
- Dispute as to repairs.**
- SEC. 10. In case any dispute shall arise as to the repair of any tile or other underground drain, the same shall be determined by said trustees in same manner as in the original construction of same.**

333.

SEC. 1241.

Where right of way is granted to one railway company in consideration of the benefit to be derived from the construction of its line, such right of way cannot be transferred by that company to another which proposes to construct a different line not running the same direction: *Crosbie v. C. I. & D. R. Co.*, 17 N. W. Rep., 481. Where a company has the power to build an additional lateral road auxiliary to the original road, whose construction and maintenance is possible only upon an independent right of way, the right of way statute, limiting the width of right of way to one hundred feet, does not prevent the condemnation of land for such additional road; and the same power may be exercised by another corpora-

tion even though it derives all its means from the first, and builds the road with the express design of leasing it: *Lover v. C. B. & Q. R. Co.*, 59-563. Where the company by parol license enters upon ground to construct its railway the subsequent payment of the damages assessed gives it an easement by contract which, though arising upon parol, cannot be revoked: *Slocumb v. C. B. & Q. R. Co.*, 57-675: In such case a subsequent purchaser takes subject to the right of way whatever it is, if it does not exceed the statutory width, and cannot set up *non user* by the company of a portion, and adverse possession thereof, to defeat its rights: *Ibid.*

DEPOT GROUNDS.

[Twentieth General Assembly, Chapter 190.]

SECTION 1. Any railway corporation owning or operating a completed railway in the state of Iowa, shall have power to condemn lands for necessary additional depot grounds in the same manner as is provided by law for the condemnation of the right of way: *Provided*, that before any proceedings shall be instituted to condemn such additional grounds, the railway company shall apply to the railway commissioners, who shall give notice to the land owner and examine into the matter and report by certificate to the clerk of the circuit court in the city in which the land is situated, the amount and description of the additional lands necessary for the reasonable transaction of the business, present and prospective, of such railway company. Whereupon said railway company shall have power to condemn the lands so certified by the commissioners.

Railway corporations may condemn lands for depot grounds.

Proviso:
Shall apply to
railway com-
missioners.

334.

SEC. 1244.

In condemnation proceedings only such damages are compensated as arise from the proper construction of a railroad. For negligent or improper construction additional damages may be recovered: *Miller v. K. & D. M. R. Co.*, 16 N. W. Rep., 567.

The exposure of the property to a destruction by fire or other dangers incident to the operation of a railroad, are legitimate subjects of consideration in determining the damages: *Dreher v. I. S. W. R. Co.*, 59-599.

Evidence in regard to how the railroad affects a farm over which it

passes aside from the mere value of the land taken, is admissible: *Ibid.*

Questions asked witness for the purpose of ascertaining the damages to land in a particular instance, *held*, proper. Also, *held*, that the question whether because of the construction of a road the land was made more wet than it otherwise would have been, was a proper one, it not being sought to show that such damages were a result of the improper construction of the road: *Britton v. D. M., O. & S. R. Co.*, 59-540.

The fact that the road bed is con-

structed in a cut is a proper fact to be shown in estimating damages: *Cummins v. D. M. & St. L. R. Co.*, 19 N. W. Rep., 268.

While the land owner is not entitled to prove the proximity of the depot or the number of tracks as independent elements of damage, yet such evidence may be admissible in determining the extent to which the company would probably use the ground taken in carrying on its business: *Ibid.*

As the company acquires the right to occupy and use the whole of the right of way, it cannot have the damages assessed on the theory that it will in fact use but part, and therefore that occupation of buildings situated upon the right of way will not be disturbed: *Ibid.*

The prices at which other lands in the vicinity of the premises in question had been sold about the time of the commencement of the proceedings, is not receivable, in the absence of evidence that there was any similarity between the lots in question and those which it was claimed had been sold: *Ibid.*

The value of growing crops upon the right of way to be taken, may be considered in assessing the compensation: *Lantz v. C., M. & St. P. R. Co.*, 57-636.

While hazard from fire is a result of the operation of the road and for which the company would not be liable may be considered, yet it is error to take into account the value of specific property, such as a grove or a house, which might thus be destroyed: *Ibid.*

The right to obstruct the passage of water is not presumed to be acquired in a condemnation proceeding, and the damages assessed do not cover damages resulting from such stoppage. The owner is not presumed to have been paid therefor, upon the theory that the company preferred to protect him against this incidental injury and the enjoyment of the easement carries with it from day to day the obligation to furnish this protection: *Drake v. C., R. I. & P. R. Co.*, 19 N. W. Rep., 215.

An inquiry as to damages is not to be confined to the government subdivision upon which the road is located, if separate subdivisions are used together as one form: *Ham v. W., I. & N. R. Co.*, 17 N. W. Rep., 157.

The damages to be taken into consideration in this proceeding may include those already sustained, as well as future damages, and the statutory remedy here provided is therefore exclusive in all such cases, and such damages can not be sued for in an action at law: *Birge v. C., M. & St. P. R. Co.*, 18 N. W. Rep., 878.

By the condemnation proceedings a corporation acquires the right to the exclusive use of the surface of the land, and the condemnation is made on the theory that this use of the surface will be perpetual. Therefore, unless it appears that the reversionary right of the land owner is of some value, as for instance by reason of the land being underlaid by coal or mineral, it is not error to disregard such reversionary interest and assess the damages at the market value of the property taken: *Hollingsworth v. D. M. & St. L. R. Co.*, 19 N. W. Rep., 325; *Cummins v. Same*, 19 Id., 268.

The company may take, remove and use for the construction and repair of its railway and appurtenances any earth, gravel, stone, timber or other material on or from the land condemned, and is not limited as to the quantity of such materials to be used in the construction and repair of its road. The limitation to so much as is necessary implied under this section relates to the quantity of land to be taken: *Winkelman v. D. M. N. W. R. Co.*, 17 N. W. Rep., 82.

Where the compensation for the right of way has not only been agreed upon but also paid to the land owner by the corporation, and he has conveyed the right of way, proceedings to condemn such right of way cannot be instituted, and would be entirely void for want of jurisdiction: *C. B. & St. L. R. Co. v. Bentley*, 17 N. W. Rep., 668.

An action will not lie upon an award of a sheriff's jury for damages for right of way unless the right of way has been entered upon and appropriated. And where a portion of plaintiff's land was included in the right of way condemned, but the road was not actually constructed over any portion of his land, and the same remained fenced and was not entered upon, held, that an appropriation did not appear and title to the right of way did not pass to the company until it had made payment. If it enters before pay-

ment it is a trespasser and may be held liable in damages as for a tort: *Dimmick v. C.B. & St. L. R. Co.*, 58-637.

Incidental injury from smoke and dust and the noise of moving trains does not give a cause of action where there is no other injury to which the injury of smoke, etc., is incident: *Ibid.*

By § 464 this method of assessing

damages is made applicable to damages caused to the abutting owner from the construction of a railway through the streets of a city, but such proceeding can be instituted only by the company, not by the property owner, who may have his action for damages without regard to this method of assessment: *Mulholland v. D. M., A. & W. R. Co.*, 60-740.

336.

SEC. 1247.

The notice must name the person whose land has been taken or affected. It is not sufficient that it is directed to all other persons having an interest in the property described: *Birge v. Chicago, M. & St. P. R. Co.*, 18 N. W. Rep., 878.

337.

SEC. 1249.

Applied: *Cummins v. Des Moines & St. Louis R. Co.*, 19 N. W. Rep., 268.

SEC. 1252.

Where the damages allowed on the appeal are less than those awarded in the assessment, in the absence of any showing that either party has made an offer, the costs should be apportioned: *Noble v. D. M. & St. L. R. Co.*, 17 N. W. Rep., 26.

SEC. 1253.

The recording of the award, if done by mistake, does not pass any title to the company so as to raise an implied contract to pay the amount of the award; certainly not until the fact of the mistake has become known to the company and it has had a reasonable time to correct it: *Dimmick v. C. B. & St. L. R. Co.*, 58-637.

338.

SEC. 1254.

The provisions allowing changes of venue in civil actions are applicable on the trial of the appeal: *Whitney v. Atlantic Southern R'y Co.*, 53-651.

A person not a party to the proceedings, although interested in the property, cannot appeal. Such person might, perhaps, make himself a party before the commissioners, but he cannot make himself a party merely by appealing. Whether the notice by publication provided for in § 1247, in a proper case, would make all persons interested parties so that any such could appeal, *quære*: *Connable v. C., M. & St. P. R. Co.*, 60-27. *C. R., I. F. & N. W. R. Co. v. C., M. & St. P. R. Co.*, 60-35.

The sheriff is not a party to the condemnation proceeding and is not

disqualified from serving notice of appeal therefrom: *C. R., I. F. & N. W. R. Co. v. C., M. & St. P. R. Co.*, 60-35.

Where the assessment covers the entire damage to two contiguous tracts, used together and owned by the same person, an appeal cannot be taken from the assessment as to one tract only: *Ibid.*

As the party has by this right of appeal an adequate remedy against any irregularities that may occur in the proceeding, or any injustice which may be done him in the award, if he has personal notice of the proceeding, this remedy is exclusive as to all such matters, and he cannot rely upon irregularities as a ground to restrain the construction of the road in accordance with such proceedings:

Phillips v. Watson, 18 N. W. Rep., 659.

Although an appeal from an assessment in favor of joint owners cannot be taken by one without joining the other in the appeal (*C. R. I. & P. R. Co. v. Huse*, 30-73), yet the

owner may take such appeal without joining a mortgagee therein, although an award has been made in favor of the owner and mortgagee jointly: *Lance v. C. M. & St. P. R. Co.*, 57-636.

SEC. 1255.

Interest on the assessment does not begin to run from the time of assessment, but only from the time of taking possession: *Hays v. C. M. & St. P. R. Co.*, 19 N. W. Rep., 245.

SEC. 1257.

In assessing damages on appeal the court will allow interest from the time of taking possession: *Hays v. C. M. & St. P. R. Co.*, 19 N. W. Rep., 247; *Noble v. D. M. & St. L. R. Co.*, 17 N. W. Rep., 26.

339.

SEC. 1258.

If appeal is taken from the award to the circuit court and the damages awarded are greater than were allowed by the commissioners, a company desiring to appeal to the supreme court must deposit the amount with the sheriff, and is not relieved from the obligation by giving a *supersedesas* bond: *Downing r. Des Moines Northwestern R. Co.*, 18 N. W. Rep., 862.

18 G. A., Ch. 19.

This statute, at least in so far as it applies to cases where the right of way is taken, as provided, for the purpose of promoting the safety of the traveling public, is not unconstitutional as authorizing the taking of private property for other than a public purpose: *Reusch v. C. B. & Q. R. Co.*, 57-687.

340.

SEC. 1260.

A portion of a line may become abandoned within the meaning of these provisions; whether it is so or not, is a question of fact: *Central Iowa R'y Co. v. Moulton and Albia R. Co.*, 57-249.

341.

SEC. 1262.

[19 G. A., ch., 122, strikes from 15 G. A., ch. 47, § 1, the words, "at such place of crossing," which the latter act added to this section.]

As this section gives a railway company the right to raise or lower highways, etc., at crossings, an indictment charging the company with obstructing the public highway with digging, ploughing, and scraping such highway, throwing up embankments, and making excavations across, along, in, or upon the highway at points where the railroad crosses such highway, does not state facts sufficient to constitute the crime of obstructing the highway: *State r. C., B. & P. R. Co.*, 19 N. W. Rep., 299.

342.

SEC. 1268.

The duty of the company to construct a private crossing in a proper case is one which may be enforced by mandamus. Facts held sufficient to justify the owner in requiring a crossing at a particular point: *Boggs v. C., B. & Q. R. Co.*, 54-435.

The company is liable, under § 1289, for injury to animals resulting from defects in gates at private crossings. Such gates are a part of the fences which it is required to

maintain: *Mackie v. Central R. of Iowa*, 54-540.

If, by reason of the act of the land-owner in wrongfully removing a gate at a private crossing on his land, stock of a third person gets upon the track and is injured, and the company is held liable therefor, it may recover from such landowner the amount which it has been compelled to pay: *C. & N. W. R. Co. v. Dunn*, 59-619.

344.

15 G. A., Ch. 34.

A road or way established under the provisions of this statute is a public way in the sense that the public may use and enjoy it in the manner in which roads and highways are ordinarily used by it, and that the mine owner who procured it to be established must use the special privilege which the act confers on him in such a way as not to destroy

this right of the public or prevent its enjoyment, and the statute is therefore constitutional. Nor can the construction of the railway in accordance with these provisions be enjoined on the ground that it prevents the owner of the land from constructing a railway thereon for his own use: *Phillips v. Watson*, 18 N. W. Rep., 659.

346.

SEC. 1278.

For similar provisions, see § 1300.

348.

SEC. 1288.

Where a railroad is constructed across unimproved or uninclosed land, and the land is afterwards improved or inclosed, the railway company is under obligation to construct cattle-guards just as it would have been under obligation to do if the land had been inclosed at the time the road was constructed: *Heskett v. W., St. L. & P. R. Co.*, 61-467.

The term cattle-guard as here used imports a guard or protection extending the whole width of the right of way. The owner is under no obligation to construct a fence up to the track upon the right of way: *Ibid.*

Where a railway impinged upon a highway some twenty rods from the place where it finally crossed it, held, that all the intervening highway was not to be deemed a part of the crossing, within the meaning of this section: *Beatty v. Central Iowa R. Co.*, 58-242.

This section is imperative, and the court will not engraft an exception upon it, relieving a company from obligation to put in a cattle-guard on the ground that it is not fit, proper and suitable to do so, in a particular case: *Mundhenk v. C. I. R. Co.*, 57-718.

350.

SEC. 1289.

This section, authorizing the recovery of double damages, is constitutional: *Welsh v. C., B. & Q. R. Co.*, 53-632.

RUNNING AT LARGE.—An animal which had escaped from its owner, with bridle and halter on, held to be "running at large": *Ibid.*

A team of horses hitched to a wagon and which have escaped from the control of their owner, are within the terms of this statute "live stock running at large;" *Inman v. C., M. & St. P. R. Co.*, 60-459.

Contributory negligence on the part of the owner not amounting to willful act, will not defeat his right to recover under this statute: *Ibid.*

A suckling colt may be considered as running at large within the provisions of this section, although its mother is under the control of the owner; *Smith v. K. C., St. J. & C. B. R. Co.*, 58-622.

The mere fact that the owner by a voluntary act exposes the animal to danger, will not necessarily make the act willful. If it was for a lawful purpose and the danger was merely incidental it should not be considered so: *Ibid.*

FAILURE TO FENCE OR REPAIR.—Liability to double damages attaches upon failure to repair as well as failure to fence in the first place: *Bennett v. W., St. L. & P. R. Co.*, 61-355.

It is error to instruct the jury that the company would be liable if it failed to erect and maintain a fence sufficient to keep cattle from its right of way, and the cattle were injured by reason of such failure. The jury must be allowed to consider whether the defect in the fence was occasioned by want of repair, and if so, whether the company had discovered that it was out of repair, or should have discovered it in the exercise of reasonable care, and had had a reasonable time afterward to make the repair: *Brentner v. C., M. & St. P. R. Co.*, 58-625.

An instruction to the effect that defendant was not liable unless there was neglect in failing to repair the fence within a reasonable time after notice of the defective condition, held, proper, as the jury must have understood therefrom that the burden of showing neglect rested upon the party seeking to recover: *Dunn v. C. & N. W. R. Co.*, 58-674.

The allegation that the road is unfenced at the time of the accident is supported by proof of the removal or destruction of the fence before the accident: *Fritz v. K. C., St. J. & C. B. R. Co.*, 61-323.

Where the fences are swept away by a flood, failure to rebuild them within two months, or until after the

road was repaired and operated, held, sufficient to render the company liable: *Ibid.*

Evidence of the condition of the fence subsequent to the time of the injury, is admissible only where it is shown that there had been no change in the condition: *Brentner v. C., M. & St. P. R. Co.*, 58-625.

Under particular facts, held, that it was not sufficiently shown that injury to stock resulted from defect in the gate through which they escaped upon the track: *Bothwell v. C., M. & St. P. R. Co.*, 59-192.

The duty to maintain gates at private crossings is a part of the duty to fence, and the company will be liable for damages to stock injured by reason of failure to construct, or keep in repair, such gates: *McKinley v. C., R. I. & P. R. Co.*, 47-76; *Mackie v. Central R. of Iowa*, 54-540.

HIGHWAY CROSSINGS—STATION GROUNDS.—Evidence considered and held sufficient to show that the animal killed was struck at a highway crossing and not in the field where the marks of blood were found: *Sullivan v. W., St. L. & P. R. Co.*, 58-602.

In a particular case held, that an instruction that if the animal killed was the property of plaintiff, was running at large, and was injured by defendant outside of the station grounds, plaintiff would be entitled to recover, was erroneous, it not appearing but that the animal might have been killed at some point outside of the station grounds where defendant had no right to fence: *Smith v. K. C., St. J. & C. B. R. Co.*, 58-622.

Where it appeared that stock was killed one and one-fourth miles from a station, held, that it might be presumed that the place at which it was killed was not within depot grounds in the absence of any evidence upon the question: *Smith v. C., M. & St. P. R. Co.*, 60-512.

A railroad has the right to fence within the corporate limits of a town so far as it extends through lands situated beyond streets or other highways, and it will be liable in double damages for injuries to stock at such places: *Coyle v. C., M. & St. P. R. Co.*, 17 N. W. Rep., 771.

The fact that a party knowingly allows his animals to be upon and to frequent the depot and station grounds where the company is not

required to fence, does not necessarily constitute contributory negligence so as to defeat recovery for such animals: *Miller v. C. & N. W. R. Co.*, 59-707.

Where animals are running at large in violation of a city ordinance, and come upon the track, they are trespassers, and the company owes no duties with reference to them and is not liable for injuries received by them, even though occasioned by a train running at greater speed than eight miles per hour, it not appearing that such improper speed was wanton or reckless: *Van Horn v. B., C. R. & N. R. Co.*, 59-33; *Same v. Same*, 18 N. W. Rep., 679.

Where it was shown that the train at the time of entering upon depot grounds was running faster than eight miles an hour, but that its speed was subsequently reduced so that at the time the stock was injured it had almost stopped, *held*, that the verdict against the defendant company for the injury of the stock was not unsupported by the evidence, as the jury were authorized to find that the train would have been stopped entirely if it had entered the ground at a speed not exceeding the lawful rate: *Miller v. C. & N. W. R. Co.*, 59-707.

AFFIDAVIT AND NOTICE.—Evidence of service of affidavit and notice in a particular case, *held*, not sufficient to support a judgment for double damages: *Keyser v. K. C., St. J. & C. B. R. Co.*, 56-440.

A return, stating the service of the notice here provided for upon a certain person, "being the station agent of said road," &c., *held*, sufficiently to show service upon a station agent "employed in the management of the business of the corporation": *Welsh v. C., B. & Q. R. Co.*, 53-632; *Schleengener v. C., M. & St. P. R. Co.*, 61-235.

The original notice and affidavit of the loss which have been served upon defendant's agent, are not evidence of such service in such sense that notice upon the defendant to produce them must be shown before other evidence thereof can be introduced to show double liability of the company: *Brentner v. C., M. & St. P. R. Co.*, 58-625; *Smith v. K. C., St. J. & C. B. R. Co.*, 58-622.

It is not necessary that the affidavit designate the place of the injury: *Mundhenk v. C. I. R. Co.*, 57-718.

An amendment to the affidavit for

the purpose of perfecting the jurat may be allowed but the company will not become entitled to thirty days after the amendment, in which to pay the claim to escape double damages, where it is clear that there was a *bona fide* attempt on the part of the owner to bring himself within the provisions of the statute and it was so understood by defendant: *Ibid.*

Service of the affidavit may be made by the claimant, or any other person: *Ibid.*

Whether proof of service of notice and affidavit upon the company can be made by an *ex parte* affidavit, *quare*: *Brentner v. C., M. & St. P. R. Co.*, 58-625.

An action for double damages may be maintained in the courts of this State for an injury occurring in another State which has a statute authorizing the recovery of such double damages: *Boice v. Wabash R. Co.*, 18 N. W. Rep., 673.

FIRE.—Whether in an action under this section, for damages caused by fire set out by the company's engines, the defendant is required to show his freedom from contributory negligence, *quare*: *Ormond v. Central Iowa Railway Company*, 58-742.

In an action against the company for damages from fires set out by its engine, it is proper to prove that other fires were set out by the same engine on the same trip: *Slossen v. B., C. R. & N. R. Co.*, 60-215.

Whether in such an action the right to recover would be affected in any manner by proof of plaintiff's contributory negligence, *quare*: *Ibid.*

Whether a failure of the land owner to plough around stacks of grain to protect them from fire would amount to contributory negligence, would be a question for the jury: *Ibid.*

The party from whose land the right of way is taken would not be negligent, as a matter of law, in sowing wheat upon the right of way and allowing the stubble to remain there after the wheat was removed: *Ibid.*

The company whose engine sets out the fire is liable for the damages resulting, although it is operating a line owned and used by another company, and the fire originates on the right of way by reason of combustible matter allowed to ac-

cumulate thereon by such other company: *Ibid.*

The fact of an injury resulting from fire caused by sparks escaping from an engine, is by this section made *prima facie* evidence of negligence. This evidence may, however, be rebutted by the defendant, the effect of the statute being simply to change the burden of proof. As to whether the rebutting evidence by defendant, showing due care, etc., on its part, is sufficient, is a question for the jury and not for the court: *Babcock v. C. & N. W. R. Co.*, 13 N. W. Rep., 740; and on rehearing, 17 *Id.*, 909.

In an action by the tenant to recover value of crop destroyed by a fire set out by the company's engines, it appearing that plaintiff did not pay cash rent, held, error to refuse to allow plaintiff to be cross-examined as to whether he was to give a share of the grain for rent: *Ormond v. Central Iowa Railway Co.*, 58-742.

As the body of this section in which the penal provision as to double damages is contained, was enacted in 1862, and the provision re-

specting the speed of trains upon depot grounds was added in 1873, and as it does not clearly appear it was intended that the provision as to penalty contained in the original section should apply to the last named provision, held, that the section would not be so construed as to authorize the recovery of double damages for injury to stock on depot grounds caused by negligence in operating trains thereon at an illegal rate of speed: *Miller v. C. & N. W. R. Co.*, 59-707.

MISCELLANEOUS.—Where a company is compelled to pay for injuries to animals of a third person, which have got upon the track through a gate at a private crossing, wrongfully removed by the landowner for whom the gate was constructed, it may recover from such landowner the amount so paid: *C. & N. W. R. Co. v. Dunn*, 59-619.

To entitle a plaintiff to recover for injury to an animal, he must introduce proof of ownership: *Welsh v. C., B. & Q. R. Co.*, 53-632.

357.

SEC. 1307.

Plaintiff's petition stated that he was a detective employed by the agent of a railroad to proceed to a certain point on the track and endeavor to detect parties who had been guilty of placing obstructions on its track, and was directed to proceed along the track of the road to that point and commence his search; that on the way he became prostrated by the heat and was injured by a passing train, through negligence of the engineer. Held, that under the averments of the petition, the detective and the engineer were co-employees, and that the plaintiff was engaged in the operation of the railroad in such sense as to be entitled to the benefit of these provisions: *Pyne v. C., B. & Q. R. Co.*, 54-223.

To entitle an employee of a railroad company to recover for personal injuries, inflicted through the negligence of a co-employee, it must be shown that his employment was connected with the operation of the railway; and where it appeared that plaintiff was a section hand and was injured by the negligence of a co-employee while engaged in loading a car, held, that it did not sufficiently ap-

pear that his employment was of such character as to entitle him to recover: *Smith v. B., C. R. & N. R. Co.*, 59-73.

The fact that an employee of a railroad company is the foreman of a crew of workmen with power to direct the men under him in their work and to hire and discharge them at will, does not prevent his being a co-employee with such workman, within the meaning of this section, and he may recover for injuries received from the negligence of the men in his employ: *Houser v. C., R. I. & P. R. Co.*, 60-230.

An employee whose duty it is to open and close the double doors across the track at the round house, and do other work about the round house, is not so engaged in the dangerous and hazardous business of operating a railway as to be entitled to recover from the company for injuries received from the falling of such door from its hinges caused by the negligence of a co-employee: *Malone v. B., C. R. & N. R. Co.*, 61-326.

A receiver who is managing a railway under the direction of a court, is

within this section and may be charged, and a recovery obtained against him, as a person operating a railway. And though his liability could not be personal, a judgment against him might be satisfied | out of the property in his hands if the court by whom he was appointed should so direct: *Sloan v. Central Iowa R. Co.*, 16 N. W. Rep., 331.

AFTER SEC. 1307.

SIGNALS AT CROSSINGS.

[Twentieth General Assembly, Chapter 104.]

SECTION 1. A bell and a steam whistle shall be placed on each locomotive engine operated on any railway in this state, and said whistle shall be twice sharply sounded at least 60 rods before a highway crossing is reached, and after the sounding of the whistle the bell shall be rung continuously until the crossing is passed, *provided*, that at street crossings within the limits of incorporated cities or towns the sounding of the whistle may be omitted, unless required by the council of any such city or town; and the company shall also be liable for all damages which shall be sustained by any person by reason of such neglect.

SEC. 2. Every officer or employee of any railway company who shall violate any of the provisions of this act shall be punished by fine, not exceeding one hundred dollars, for each offense.

STOPPING AT RAILWAY CROSSINGS.

[Twentieth General Assembly, Chapter 163.]

SECTION 1. All trains run upon any railroad in this state which intersects or crosses, or is intersected or crossed by any other railroad upon the same level, shall be brought to a full stop, at a distance not less than two hundred feet, nor more than eight hundred feet from the point of intersection or crossing of such road, before such intersection or crossing is passed by any such train.

SEC. 2. Every engineer violating the provisions of the preceding section shall for each offense forfeit one hundred dollars to be recovered in an action in the name of the state of Iowa, for the benefit of the school fund, and the corporation on whose road such offense is committed shall forfeit for each offense so committed the sum of two hundred dollars, to be recovered in like manner.

363.

15 G. A., Ch. 68.

This statute determines the charges which shall be considered excessive, but the injured party may waive the tort created by statute, and sue upon his implied contract raised by the law whereby the carrier is obligated to repay to the consignee or consignor of the property all sums exacted in excess of reasonable compensation. Plaintiff need not show that he made

objection or protest prior to the payment made in excess of reasonable compensation: *Heiserman v. B., C R. & N. R. Co.*, 18 N. W. Rep., 903.

In such cases the action would not be barred in two years under the provision relating to suits to recover a statute penalty, but would stand on the same footing as any action on implied contract: *Ibid.*

364.

17 G. A., Ch. 77.

ENFORCEMENT OF ORDERS AND REGULATIONS OF BOARD OF RAILROAD COMMISSIONERS.

[Twentieth General Assembly, Chapter 133.]

Circuit and
District court
to enforce de-
crees of R. R.
Commission-
ers.

Proceedings
by equitable
action and in-
stituted by
atty. gen.

Court shall re-
quire issue
made up at
first term.

Order of court.

Violations of
decrees pun-
ished by fine
and imprison-
ment.

Decree shall
remain in
force.

Court shall en-
ter judgment
for costs.

SECTION 1. The circuit and district courts of this state shall have jurisdiction to enforce, by proper decrees, injunctions and orders, the rulings, orders and regulations affecting public right, made or to be made by the board of railroad commissioners, such as are now, or may hereafter be, authorized to be made by them for the future direction and observance of railroads in this state. The proceedings therefor shall be by equitable action in the name of the state of Iowa and shall be instituted by the attorney general, whenever advised by the board of railroad commissioners that any railway corporation, or person operating a line of road in this state, is violating and refusing to comply with any rule, order or regulation made by such board of railroad commissioners, and applicable to such railroad or person. It shall be the duty of the court in which any such cause shall be pending, to require the issues to be made up at the first term of the court to which such cause is brought, which shall be the trial term, and to give the same precedence over other civil business. If the court shall find that such rule, regulation, or order is reasonable and just, and that in refusing compliance therewith said railway company is failing and omitting the performance of any public duty or obligation, the court shall decree a mandatory and perpetual injunction compelling obedience to and compliance with such rule, order, or regulation by said railroad company, or other person, its officers, agents, servants and employes and may grant such other relief as may be deemed just and proper. All violations of such decree shall render the company, persons, officers, agents, servants and employes who are in any manner instrumental in such violations, guilty of contempt of court, and the court may punish such contempt by fine not exceeding one thousand dollars for each offense, and may imprison the person guilty of contempt until he shall sufficiently purge himself therefrom. And such decree shall continue and remain in effect and be enforced until the rule, order or regulation shall be modified or vacated by the board of railroad commissioners.

SEC. 2. Whenever a decree shall be entered against a railroad company or person under section 1, the court shall render judgment for costs, including a reasonable attorney's fee for counsel representing the state in said case, and said judgment shall be enforced by execution.

366.

SEC. 8.

[19 G. A., ch. 146, amends this section by enacting the following:]

SECTION 1. The executive council shall, on or before its annual meeting on the second Monday in July in each year, determine the amount required to be paid by each railroad company to meet

the sum certified to by the board of commissioners, and shall levy the same upon the property of the railroad companies in the state, and shall notify each company of the said levy, and said tax shall be paid by the railroad companies into the state treasury.

SEC. 2. The taxes levied under the provisions of this chapter shall be due and collectible as provided by section 5, chapter 59, acts of 17th general assembly.

367.

SEC. 11.

Under a section somewhat similar to this in its provisions (15 G. A., ch. 68, § 10, now repealed), held, that the burden was upon a plaintiff suing under that act for the penalty provided for violation thereof by making discriminations against him in charges, to show not only that the charges were "for a like service from the same place," but also that they were "upon like condition:" *Paxon v. Ill. Cent. R. Co.*, 56-427.

369.

16 G. A., Ch. 123.

[By 20 G. A., ch. 120, township trustees are authorized to employ counsel in litigation to which they are made parties concerning their right or duty to levy taxes, which have been authorized upon express conditions: See that act in supplement to page 89.]

The expenses of township elections | able to the county: *McBride v. Har-
ton Co.*, 58-219.
to vote aid to railroads are not charge-

[This act is now repealed by the following:]

TAXES IN AID OF RAILROADS.

[Twentieth General Assembly, Chapter 159.]

SECTION 1. Chapter 123 of laws of the sixteenth general assembly and chapter 87 and 173 of the laws of the seventeenth general assembly and chapter 192 of the laws of the eighteenth general assembly and chapter 102 of the laws of the nineteenth general assembly are hereby repealed and the following is enacted instead thereof.

SEC. 2. Taxes not to exceed five per centum on the assessed value of any township, incorporated town or city may be voted to aid any railroad company which is or may become incorporated under the laws of the state of Iowa, to aid in the construction of a projected railroad within this state as hereinafter provided.

SEC. 3. Whenever a petition shall be presented to the council or trustees of any incorporated town or city, or the trustees of any township signed by a majority of the resident freehold taxpayers of such township, incorporated city or town asking that the question of aiding any railroad company incorporated under the laws of the state of Iowa in the construction of a projected railroad within this state be submitted to the voters thereof, it shall be the duty of the trustees or council of such incorporated town or city or trustees of such township to immediately give notice of a special election by publication in some news-

Notice shall specify.

paper published in said incorporated town, city or township if any be published therein, and if not, then in some newspaper published in the county if any such there be and also by posting copies of said notice in five public places in such township, incorporated city or town at least ten days before said election which notice shall specify the time and place of holding said election, the name of the company and the line of the road proposed to be aided, the rate per centum of the tax to be levied, whether one-half of said tax shall be collected the first year and one-half the following year, or the whole thereof to be collected in one year, the amount of work required to be done, and when and where the same shall be done, to what point said railroad shall be fully completed and any other conditions which shall be performed before such tax or any part thereof shall become due, collectible and payable, and in no case shall such tax become due, collectible or payable until such railroad is fully completed according to the conditions in said notice. At such election the question of taxation shall be submitted. The form of the ballots shall be "for taxation" and "against taxation" and if a majority of the votes polled be "for taxation" then the recorder of the incorporated town, city or township clerk or clerk of election shall forthwith certify to the county auditor the result of said election, the rate per centum of tax thus voted, the year or years during which the same is to be collected, the name of the company to which voted, and the time, terms, and conditions upon which the same, when collected, is to be paid to the railroad company under the conditions and stipulations in said notice, together with an exact copy of the notice under which the election was held, which the county auditor shall at once cause to be recorded in the office of the recorder of deeds of the county; and the expense thereof and of publishing said notices and all the expenses of said election shall be paid by the railroad company to which it is proposed to vote said tax. When such certificates shall

Form of ballot.

Duty of recorder or clerk.

Expense to be paid by railroad company.

Duty of board of supervisors.

Collection of taxes.

Notice must conform to petition.

have been made and recorded the board of supervisors of the county shall, at the time of levying the ordinary taxes next following, levy such taxes as are voted under the provisions of this act as shown by said certificate, and cause the same to be placed on the tax lists of the proper township, incorporated city or town, indicating in their order thereupon when and in what proportion the same are to be collected and upon what conditions the same are to be paid to the railroad company, a certified copy of which order shall accompany the tax lists. Said taxes shall be collected at the time or times specified in said order in the same manner and subject to the same laws after they are collectible as other taxes, or as may be stated in the petition and notices for the election.

SEC. 4. The stipulations and conditions contained in the said notices must conform to those set forth in the petition asking the election, and the aggregate amount of tax to be voted or levied under the provisions of this act in any township, incorporated town or city shall not exceed five per centum of the assessed value of the property therein respectively.

SEC. 5. The moneys collected under the provisions of this act

shall be paid out by the county treasurer to the treasurer of the railroad company for whom the same was voted upon the orders of the president or managing director thereof at any time after the trustees of such township, or trustees or council of such incorporated town or city voting said tax, or a majority of them, shall have certified to the county treasurer that the conditions required of the railroad company and set forth in the notice for the special election at which the tax was voted have been complied with, and said township trustees, or trustees or council of such incorporated town or city shall make said certificate when the said conditions have been complied with sufficiently to entitle the said railroad company to the amount of such orders, or when the said conditions are fully complied with and performed on the part of the railroad company; but if the costs and expenses of holding said election and of recording said certificates shall not have been paid by the railroad company, then the county treasurer shall first deduct from the moneys so collected the amount of said costs and expenses and pay the same over to the parties entitled thereto.

SEC. 6. It shall be the duty of the county treasurer, when required, in addition to a tax receipt to issue to each tax payer on the payment of any taxes voted under the provisions of this act a certificate showing the amount of tax so paid, the name of the railroad company entitled thereto, and when the same was paid, and the treasurer shall be entitled to charge and receive the sum of twenty-five cents for each certificate so issued. Said certificates are hereby made assignable and when presented by any person holding the legal title thereto to the president, managing director, treasurer or secretary of the railroad company receiving the taxes paid as shown by such certificate, in amount showing the sum of one hundred dollars or more of taxes to have been paid for said railroad company, said railroad company shall issue or cause to be issued to said person the amount of stock of the company desiring the benefit from said taxes to the amount of said certificate or certificates, and if the taxes paid as shown by said certificate or certificates amount in the aggregate to more or less than any certain number of shares of said stock, then the holder of said certificates shall be entitled to receive the full number of shares of stock covered by said certificates and may make up and tender in money the balance of any share of said stock when the certificates held by him are not equal in amount to one full share of such stock, the stock for such purpose to be estimated at its par value. Whenever it shall be proposed in the petition and notice calling said election to issue first mortgages, bonds, not exceeding the sum of eight thousand dollars per mile for a railroad of three feet gauge and not exceeding the sum of sixteen thousand dollars per mile for the ordinary four feet eight and one half inch gauge, in lieu of stock as herein provided, it shall be lawful to issue said bonds of the denomination of one hundred dollars in the same manner as is provided for the issue of stock, and in such case the petition and notice shall state the amount of bonds per mile to be issued, the rate of interest, and the time of payment of the interest and principal of said bonds.

Board of directors liable to stockholders: when.

SEC. 7. The board of directors of any railroad company receiving taxes voted in aid thereof under the provisions of this act, or those members thereof or either of them who shall vote to bond, mortgage, or in any manner encumber said road to an amount exceeding the sum of eight thousand dollars per mile for a railroad of three feet gauge, or exceeding the sum of sixteen thousand dollars per mile for the ordinary four feet eight and one half inch gauge, not including in either case any debt for ordinary operating expenses, shall be liable to the stockholders or either of them for double the amount estimated of its par value of the stock by him or her held, if the same should be rendered of less value or lost thereby.

Taxes remaining in county treasury more than one year, forfeited.

SEC. 8. Should the taxes voted in aid of any railroad under the provisions of this act remain in the county treasury for more than one year after the same have been collected, the right to them by the railroad company shall be considered forfeited and the persons who paid the said taxes shall be entitled to receive back from the county treasurer their pro-rata shares thereof remaining, and in all such cases where any taxes have been voted or levied upon the real or personal property in any township, city or town in any county in this state to aid in the construction of any railroad as hereinbefore provided, and the railroad in aid of which said taxes were voted or levied has not been built or completed or operated into or through such township, city or town, it shall be the duty of the board of supervisors of the county where said taxes have been voted and levied and still remain on the tax books, to give the railroad company to which the tax was voted at least thirty days' notice in writing, to be served like original notices, of their intention to abate and cancel such taxes, and thereupon to cause the same to be canceled and stricken from the tax books of the county, which cancellation shall remove all liens created by the levy of said taxes; but the foregoing provisions shall in no manner affect any actions which may now be pending for the recovery of any taxes heretofore voted in aid of any railroads; and in all cases where the railroad company to whom any taxes may have been or may hereafter be voted, neglects or refuses to receive such taxes or to require or permit the same to be collected and certifies therefor to be issued for the period of one year after such taxes become due and collectible, and in all cases where any taxes have been heretofore voted in aid of any railroad and the conditions upon which the same were voted have not in fact been complied with and the time in which said conditions were to be fulfilled has expired, all such taxes are hereby declared forfeited and canceled and the county officers of the county in which any such taxes shall have been levied and entered upon the tax books shall enter cancellation thereof upon the proper county records; and in all cases where any taxes to aid in the construction of any railroad may hereafter be voted upon the inducement or promise offered on the part of said railroad company, or any duly authorized agent thereof, for any rebate or exemption from said tax or any part thereof, or any agreed price to be paid for the stock that may be issued in lieu of said tax, or a division of said

Duty of board of supervisors, when road is not built.

Taxes declared forfeited.

tax or any portion or percentage thereof, with any of the voters or tax payers as an inducement to procure said tax to be voted, all such taxes so procured to be voted are and shall be absolutely void.

SEC. 9. Nothing contained in this act shall preclude any tax payer who may contract with a railroad company for which taxes shall have been or may hereafter be voted under the provisions of this act, to pay his tax thus voted or any part thereof in labor upon the line of said railroad, or in material for its construction, or supplies furnished or money paid for the construction of the road in pursuance of the terms and conditions stipulated in the notices of election in lieu of a payment to the county treasurer, upon presenting to the county treasurer a receipt from said railroad company or its duly authorized agent specifying the amount of such payment, the same shall be credited by the county treasurer on his tax in aid of said railroad, with the effect in all respects as though the same was paid in money to the said county treasurer; and when such receipts have been presented and thus credited by the county treasurer they shall have the same force and validity in his settlement with the board of supervisors as the orders from the railroad company provided for in section four of this act; and *provided*, laborers shall have lien upon said tax so voted in aid of a railroad company for the amount due them for labor performed in the construction of said railroad.

SEC. 1.

Where the validity of such a tax has been adjudicated in an action against the treasurer and the board of supervisors, by parties claiming the tax, it cannot, in the absence of collusion or fraud, be again called in

question in an action by a taxpayer against the treasurer to enjoin its collection: *Lyman v. Faris*, 53-498.

Lamb v. Anderson, 54-190, followed: *I. M. & N. P. R. Co. v. Schenck*, 56-628.

370.

SEC. 2.

Where the certificate herein required did not contain the conditions provided for, except by reference to the notice of election attached as exhibit thereto, *held*, that such certificate was insufficient: *M. & I. S. R. Co. v. Hiams*, 53-501.

A levy of taxes in different townships is to be considered as distinct, even though such separate levies are

made by one resolution: *Woodworth v. Gibbs*, 61-393.

The action of the board in making the levy is not judicial but purely ministerial; their action in so doing may be questioned in a collateral proceeding, and held void for want of power to do it at the time it was done: *Scott v. Union Co.*, 19 N. W. Rep., 667.

371.

SEC. 3.

A township, incorporated town, or city, having, under this statute, voted taxes to the amount of five per centum upon its taxable property in aid of one or more railroads, cannot impose another tax upon property for that purpose. The power conferred

by the statute ceases upon the levy of taxes to that amount. But this is not to be understood as applicable to cases where taxes duly levied have been abandoned or become uncollectible. An increase in value of taxable property after levy of the five per

centum of taxes, does not confer the power to make an additional levy: *Dumphrey v. Supervisors of Humboldt Co.*, 58-273.

A *per centum* of taxes levied under a prior act, providing for taxation in aid of a railroad, even though such prior act contained the same limita-

tion as to amount contained in this section, cannot be considered in determining whether the limit fixed in this act has been exceeded. This limitation applies only to taxes levied under this act: *Scott v. Union Co.*, 19 N. W. Rep., 667.

372.

SEC. 7.

Under 13 G. A., ch. 102, § 3, containing provisions similar to those of this section, *held*, that the county had no interest in the tax collected; that it was to be paid to the county treasurer, and in proper case should be refunded by him without any warrant or order of the board of supervisors; that in case of misappropriation

by the county treasurer, the loss would not fall upon the county; and that the claim of plaintiff for the refunding of his proportion of the tax forfeited was strictly against the fund, and not against the county: *Burnes v. County of Marshall*, 56-20.

SEC. 8.

Such receipts as are herein contemplated are not obligations to pay money, but are in the nature of advance receipts, to be presented to the county treasurer in payment of taxes. No action thereon against the rail-

road company, or an assignor of such instrument, can be maintained thereon, at least until demand has been made on the treasurer that they be received for taxes: *Lisle v. I. M. & N. P. R. Co.*, 54-499.

17 G. A., Ch. 173.

[This act is repealed by 20 G. A., ch. 159: See that act in supplement to page 369.]

373.

18 G. A., Ch. 192.

[This act is repealed by 20 G. A., ch. 159: See that act in supplement to page 369.]

CANCELLATION OF RAILROAD AID TAXES.

[Nineteenth General Assembly, Chapter 102.]

SECTION 1. In all cases where taxes have been or may hereafter be voted and levied upon the property of any township, city, or town in any county in this State, for the purpose of aiding in the construction of any railroad, under and by virtue of the laws authorizing and permitting the voting and levying of such tax, and when the railroad company to whom such taxes have been or may hereafter be voted has complied with the terms and conditions upon which such aid or tax was or may hereafter be voted, and when such railroad company, by reason of the compliance with the terms and conditions on which such tax was voted, is entitled to receive the same and have such tax collected and paid, neglects or refuses to receive such taxes, or to permit the same to be paid and collected and certificates issued, as provided by law, for the period of six months after such tax is due and payable, such railroad company shall forfeit all their right to such aid or tax; and the board of supervisors of the county in which such aid or

For neglect or
refusal to re-
ceive tax when
due, or permit
it to be paid.

tax was or may hereafter be voted and levied shall cause such tax to be abated and canceled on the tax-books of such county: *Provided*, that in all cases where taxes have been heretofore voted in aid of the construction of any railway it shall be the duty of the Notice board of supervisors, before causing the cancellation and abatement of such tax, to give the railroad company to whom the tax was voted at least thirty days' notice in writing of their intention to abate and cancel such tax, such notice to be served like original notices.

[This act is repealed by 20 G. A., ch. 159: See that act in supplement to page 369.]

UNION RAILWAY DEPOTS.

[Twentieth General Assembly, Chapter 139.]

SECTION 1. In order to facilitate the public convenience and safety in the transmission of freight and passengers from one railway to another and to prevent unnecessary expense and inconvenience attending the accumulation of a number of stations in one place, authority is hereby given to any number of persons or any number of railway corporations or both persons and railway corporations to form themselves into a body corporate under the general incorporation laws of this state relating to corporations for pecuniary profit for the purpose of acquiring, establishing, constructing and maintaining at any place in this state union station houses or depots for freight or passengers, or for both, with necessary offices for express, baggage and postal rooms in the same or separate buildings, railroad *tracts* [tracks] and other appurtenances of such depots. And for that purpose may make and file for record articles of association in the manner provided for such corporations in this state, and any railroad company operating a road in this state or interested in the operation of a road in this state, whether organized under the laws of this state or elsewhere, may become stockholder in such corporation in the same manner an individual might. Such articles may provide for the business of the corporation being conducted under by-laws to be adopted by the stock-holders, in which case a copy of such by-laws shall be posted in the passenger or waiting rooms of the depot and in the office of the company.

SEC. 2. Every corporation formed under the provisions of this act shall have power to take and hold for the purposes mentioned in section 1, such real estate as may be deemed necessary by the railroad commissioners for the location, erection and construction of their depot and its approaches, which they may acquire by purchase or by condemnation as provided by chapter 4, title 10, code of Iowa, 1873, and when condemned and paid for as thereby provided, such real estate shall belong to the corporation.

SEC. 3. Such corporation, with consent of the city council of any city or town in this state in which said depot is located, shall have the right to lay its tracks to make necessary connection with all railways desiring to use such depot upon the streets or alleys of said city, and by and with the consent of such city

Persons and
railway cor-
porations may
organize for
the purpose of
establishing
union depots.

May file arti-
cles.

Business may
be conducted
under by-laws.

Power of cor-
porations un-
der this act.

With consent
of city council,
may make
necessary con-
nections.

council may erect such depot upon or across any such street or alley, but no railroad track can thus be located, nor can such depot be so erected until after due injury to property abutting upon the streets or alleys upon which such railway track is proposed to be located or such depot is proposed to be erected, has been ascertained and compensation made in the manner provided for taking private property for works of internal improvement in chapter four of title ten of the code, subject to the provisions of section 464 of the code.

Railroads not released from liability for damages.

SEC. 4. Nothing in this act contained, or in the articles of incorporation or by-laws, of the corporation herein provided for, shall in any manner release the railroad companies using such union depots, tracks or appurtenances from the same liability for all damages by injuries to persons, stock, baggage or freight, or for the loss of baggage or freight, in or about said union depot grounds as if said depot, tracks and appurtenances wholly belonged to and were operated by said railroad companies using the same.

374.

STATION HOUSES AT INTERSECTIONS.

[Twentieth General Assembly, Chapter 24.]

Erection.

SECTION 1. All railroad corporations shall at all points of connection, crossing, or intersection with the roads of other corporations, unite with such corporations in establishing and maintaining suitable platforms and station houses for the convenience of passengers desiring to transfer from one road to the other, and for the transfer of passengers, baggage or freight, whenever the same shall be ordered by the railroad commission; and such corporation shall, when so ordered by the railroad commission, keep such depot or passenger house warmed, lighted and opened to the ingress and egress of all passengers a reasonable time before the arrival and until after the departure of all trains carrying passengers on said railroad or railroads; and said railroad companies so connecting, crossing or intersecting, shall stop all trains at said depots at said connections, crossings or intersections, for the transfer of passengers, baggage and freight, when so ordered by the railroad commission, and the expense of constructing and maintaining such station house and platform shall be paid by such corporations in such proportions as may be fixed by the order of the railroad commission.

Care.

Such corporations, connecting or intersecting as aforesaid, shall also, whenever ordered by the railroad commission, so unite and connect the tracks of said several corporations as to permit the transfer from the track of one corporation to the other of loaded or unloaded cars designed for transportation upon both roads.

All trains must stop.

Expense apportioned.

Connection of tracks.

Such corporations, connecting or intersecting as aforesaid, shall also, whenever ordered by the railroad commission, so unite and connect the tracks of said several corporations as to permit the transfer from the track of one corporation to the other of loaded or unloaded cars designed for transportation upon both roads.

Penalty.

SEC. 2. Any railroad corporation or company which, after having received 90 days' notice by the railroad commissioners, shall neglect or refuse to comply with the provisions of section 1 of this act, shall, for every day such corporation or company fails, neglects or refuses to comply therewith, forfeit and pay the sum of

twenty-five dollars, which may be recovered in the name of the State of Iowa, for the use of the school fund of the county where-in such crossing or intersection is situated, and it shall be the duty of the prosecuting attorney of the proper judicial district to prosecute for and recover the same. — District attorney to prosecute.

SEC. 1324.

[19 G. A., ch. 104, amends this section by inserting after the word "telegraph," in the second line, the words "*or telephone.*"]

375.

SEC. 1328.

This does not excuse an operator from producing the telegrams which have passed between parties, when subpoenaed as a witness in an action | between them as to the transaction to which they relate: *Woods v. Miller*, 55-168.

377.

SEC. 1330.

Where one was afflicted with disease and cruelly treated by the members of his family, so that he was driven from home, *held*, that he was a poor person within the meaning of this section, although he had property which was appropriated and withheld from him by such family; and | therefore that the son was liable to an action by the county for support furnished to him, and that the county, although having the right of action against the wife, might waive it and enforce recovery against the son: *Jasper Co. v. Osborn*, 59-208.

379.

SEC. 1350.

The county cannot maintain action | aid furnished: *Bremer Co. v. Curtis*, 51-72.

SEC. 1352.

Facts considered, as showing the residence of a pauper and defendant's liability for her support: *County of Cerro Gordo v. County of Hancock*, 58-114.

A *prima facie* case of settlement is made by proving residence, unless it be proven or conceded that the party is a married woman, in which | case it might be necessary to prove either that her husband resides in the same county, or that she is deserted by him: *Scott Co. v. Polk Co.*, 61-616.

This section is applicable to the case of an insane person who becomes a county charge: *Ibid.*

380.

SEC. 1353.

An insane and crippled pauper removed from one county to another, and, supported there by the former county for more than a year, does not | thereby obtain a settlement in the county to which he is removed: *Fayette Co. v. Bremer Co.*, 56-516.

SEC. 1357.

It does not follow that because a person is obliged to apply to the county for relief where he has no settlement, he should be removed at once to the county of his settlement, regardless of distance, expense, or oth- | er circumstances. The county furnishing relief should have a right of action upon the county of the settlement for relief so furnished, without obligating the supervisors of the latter county to make an order of re-

moval; and it should be allowable in such cases to give notice of such claim for relief furnished without requiring removal. The county auditor may give such notice, but the no-

tice for the order of removal can only be given by the township trustees or county supervisors: *Scott v. Polk Co.*, 61-616.

381.

SEC. 1358.

In the petition in an action by one county to recover from another the expenses of the support of a pauper, it must be averred that the defendant county is the county of the pauper's

settlement. An averment that plaintiff is informed that the pauper has a settlement in defendant county, is not sufficient: *Winneshiek Co. v. Allamakee Co.*, 17 N. W. Rep., 753.

SEC. 1359.

The circuit court has exclusive jurisdiction of the proceeding here contemplated, and the district court cannot obtain jurisdiction thereof by change of place of trial, even by consent of parties: *Cerro Gordo Co. v. Wright Co.*, 59-485.

The county applied to for relief may make an order of removal to the county of the pauper's settlement, and give notice thereof, or it may give to the county of the settlement

notice that such pauper has become a county charge. In the latter case, the county notified is not under obligation to give notice of its intention to contest the removal; and in case of an action against it by the county furnishing relief, to recover for the relief so furnished, the circuit court has exclusive jurisdiction: *Winneshiek Co. v. Allamakee Co.*, 17 N. W. Rep., 753.

SEC. 1361.

Where a board of supervisors appoints an overseer of the poor for a city of the first or second class, as provided in this section, the power conferred upon such overseer is ex-

clusive of that of the trustees of the township in which such city is located: *Hoyt v. Black Hawk Co.*, 59-184.

382.

SEC. 1365.

Where the board of supervisors, as a matter of precaution and in the interest of economy, employ a convenient and competent physician, in advance, to furnish to all poor persons of the county all medicines and medical aid that they may require, the trustees cannot disregard such employment and render the county liable for services rendered by a physician employed by them: *Mansfield v. Sac Co.*, 59-694; *Gowley v. Jones Co.*, 60-159.

When the trustees authorize aid to be furnished to a poor person, it may be continued, if done in good faith, until the board of supervisors otherwise order, even though the trustees fail to report the case to the board;

and the trustees, in such case of failure to report, will be held liable to the county for damages arising from continuance of aid to persons not properly entitled to it: *Mansfield v. Sac Co.*, 60-11.

Recovery cannot be had for aid furnished before application is made to the trustees, and the furnishing of such aid is authorized by them: *Ibid.*

Written orders of the township trustees made under this section and upon which the board of supervisors act, are valid although not made of record under the provisions of sections 392 and 395: *Bremer Co. v. Bannon Co.*, 61-624.

383.

SEC. 1366.

A recommendation that a bill be paid is not equivalent to the certificate required by this section, and is not sufficient to entitle the claimant to payment from the county: *Mansfield v. Sac Co.*, 60-11.

A certificate signed by the trustees to the effect they had ordered the

services specified in the claimant's bill for medical services to poor persons, held, not a sufficient compliance with this section: *Sloan v. Webster Co.*, 17 N. W. Rep., 168.

The board may waive the certificate required by this section: *Bradley v. Delaware Co.*, 57-552.

385.

SEC. 1383.

[20 G. A., ch. 201, provides for the location of another hospital for the insane and erection of buildings therefor, but its provisions are temporary in their nature and it is not here inserted.]

386.

SEC. 1384.

[20 G. A., ch. 66, amends this section by striking out the word "first" in the sixth [seventh] line thereof and inserting in lieu thereof the word "second," and by striking out the word "October" in the seventh line [of the section as amended by 17 G. A., ch. 100, § 1] and inserting the word "July," also by changing the eleventh [and twelfth] line[s] [of the section as amended by 17 G. A. ch. 100, § 1] by striking out "first Wednesday in (January, April and July)" and inserting "second Wednesday in (October, January and April)"]

SEC. 1385.

[19 G. A., ch. 175, § 1, provides that the reports of boards of trustees of state institutions shall be made on or before the 15th day of August preceding the regular sessions of the general assembly: See that act, in supplement to page 28.]

390.

SEC. 1401.

The provisions here made for appeal, and the further provisions contained in §§ 1442 and 1444, allowing subsequent investigation of the question of sanity, prevent this section from being in conflict with the constitutional guarantees against deprivation of personal liberty without due jury trial: *County of Blackhawk v. Springer*, 58-417.

391.

SEC. 1402.

Notice to the debtor county in which the person has a legal settlement, is a condition precedent to the right of recovery against such county: *Poweshiek Co. v. Cass Co.*, 18 N. W. Rep., 895.

399.

SEC. 1435.

[19 G. A., ch. 175, § 1, provides that the reports of the committee shall be made biennially, on or before the 15th day of August preceding the regular sessions of the general assembly: See that act, in supplement to page 28.]

A visiting committee has no authority to punish witnesses for contempt in refusing to testify before it: *Brown v. Davidson*, 59-461.

402.

SEC. 1448.

It is only persons whose lands are enclosed by a lawful fence who are authorized to distrain domestic animals injuring their premises. If lands are not so enclosed there is no right to distrain, and possession acquired by such distraint is unlawful. The rightfulness of the distraint may therefore be inquired into in an action of replevin; it is not a matter for the exclusive determination of the fence viewers. But if the distraint is found to be illegal, the property may be remanded to the distrainor and the damages may be assessed by the township trustees subject to the right of appeal as provided for in §§ 1354 and 1355: *Syford v. Schiver*, 61-155.

If animals, though lawfully on adjoining land, escape therefrom and do damage and their escape is not in consequence of the neglect of the person suffering the damage, their owner is liable therefor. It is not necessary that the fence surrounding the land of the person injured is throughout a lawful fence, if it is shown to have been such at the place where the cattle broke through. And this will be true where the owner of the adjoining land and the owner of the cattle are the same person and the fence broken through belongs to him: *Noble v. Chase*, 60-261.

404.

SEC. 1452.

The fact that an eighty acre tract of land is surrounded by a single ploughed furrow, and includes a few acres under cultivation, will not render it all improved or cultivated land within the meaning of this section;

but in such cases the owner of the land may recover damages from the owner of cattle who herds and confines them upon such land: *Otis v. Morgan*, 17 N. W. Rep., 104.

SEC. 1454.

This section does not confer special authority upon the township trustees to inquire into and determine the lawfulness of the fence enclosing the injured premises, and that matter may be determined in an action of

replevin to recover the property from the person making distraint, when it is claimed that his premises are not surrounded by a lawful fence: *Syford v. Schiver*, 61-155.

408.

SEC. 1485.

Aside from the statute a person who has in his charge a vicious dog, knowing his character, and fails to restrain him, is absolutely liable for an injury inflicted. It makes no differ-

ence whether the person has charge of the animal as owner or owner's bailee: *Marsel v. Bouman*, 17 N. W. Rep., 176.

409.

AFTER SEC. 1488.

COMPENSATION FOR DOMESTIC ANIMALS KILLED BY DOGS.

[Twentieth General Assembly, Chapter 70.]

Assessors to
list dogs.

Owner.

SECTION 1. It shall be the duty of every assessor of this state, at the time of listing the property of his district, to list each dog over three months of age in the name of the owner thereof, without affixing any value thereto. Any person keeping or harboring a dog or dogs shall be deemed the owner thereof within the meaning of this act.

SEC. 2. The board of supervisors of each county shall, at

their September session each year, when levying other taxes, levy ~~Amount taxed.~~
a tax of fifty cents on each male, and one dollar on each female
dog listed by the assessor, which tax shall constitute a special
fund, to be disposed of as provided for in this act.

SEC. 3. It shall be the duty of each county auditor to provide
suitable columns, properly headed, in the assessor's book, to car- ^{Duty of audi-}
ry out the provisions of this act. ^{tor.}

SEC. 4. The treasurer of each county, on receiving the tax
books for the collection of other taxes, shall collect the tax ^{Duty of treas-}
herein provided for as other taxes are collected, and keep the ^{urer.}
same as a separate fund, to be known as the domestic animal
fund.

SEC. 5. Any person damaged by the killing or injury of sheep,
or any other domestic animal, by a dog or dogs, may present to ^{Damages, how}
the board of supervisors of the county in which such killing or
injury occurred, a detailed account of such killing or injury,
stating the amount of damage claimed therefor, and verified by
affidavit, such claim to be filed with the county auditor at least
ten days before some regular session of the board, and within
fifteen days from the time such killing or injury occurred. At
the first regular session of the board of supervisors after such
claim shall have been filed for ten days as herein provided, the
same may be established by proof before the board; and upon ^{Proof of loss.}
the hearing thereof, the claimant shall establish his claim for
damages by the testimony of at least two competent witnesses,
besides himself. It shall also be made to appear to the satisfac-
tion of said board that such damage was not caused, in whole or
~~In part, by a dog or dogs owned or controlled by the claimant,~~
and that claimant does not know whose dog or dogs caused the
damage, and that said damage was caused by dogs; or, in case
the owner of such dog or dogs is known to the claimant, and that
such owner has no property subject to execution, out of which
the claim can be made.

The board shall hear and determine said claims in the order in
which they are filed unless good cause is shown for continuance, ^{Board of su-}
and shall allow the same or such portions thereof as they may ^{pervisors to al-}
deem just, and shall authorize the auditor to issue warrants for ^{low 75 per}
cent. the same not to exceed seventy-five per cent. of the amount al-
lowed to be paid out of the domestic animal fund.

SEC. 6. The treasurer shall, between the first and tenth days
of January and the first and tenth days of July of each year, ^{Treasurer to}
pay the said warrants issued by the auditor as provided for by
section five of this act, out of the domestic animal fund. If
said fund is insufficient to pay said warrants in full, he shall
pay on each *pro rata*. If after paying all warrants at either
period above named, there shall remain more than two hundred ^{Excess to be}
and fifty dollars of said fund in the treasury, the board of su- ^{transferred.}
pervisors shall order the excess to be transferred to the county
fund.

VETERINARY SURGEON.

[Twentieth General Assembly, Chapter 189.]

SECTION 1. The governor shall appoint a state veterinary ^{Governor to}
surgeon who shall hold his office for the term of three years un- ^{appoint.}
Term of office.

Qualification.	less sooner removed by the governor; he shall be a graduate of some regular and established veterinary college and shall be skilled in veterinary science; he shall be a member of the state board of health, which membership shall be in addition to that now provided by law. When actually engaged in the discharge of his official duties he shall receive from the state treasury as his compensation the sum of five dollars per day and his actual expenses, which shall be presented under oath and covered by written vouchers before receiving the same.
Compensation.	
Powers of.	SEC. 2. He shall have general supervision of all contagious and infectious diseases among domestic animals within or that may be in transit through the state and he is empowered to establish quarantine against animals thus diseased or that have been exposed to others thus diseased, whether within or without the state, and may, with the concurrence of the state board of health, make rules and regulations such as he may deem necessary for the prevention, against the spread, and for the suppression of said disease or diseases, which rules and regulations, after the concurrence of the governor and executive council, shall be published and enforced, and in doing said things or any of them, he shall have power to call on any one or more peace officers whose duty it shall be to give him all assistance in their power.
Rules to be approved by executive council.	
May call on peace officers.	
Penalty for interfering with.	SEC. 3. Any person who willfully hinders, obstructs or resists said veterinary surgeon or his assistants, or any peace officer acting under him or them when engaged in the duties or exercising the powers herein conferred, shall be guilty of a misdemeanor and punished accordingly.
Annual report.	SEC. 4. Said veterinary surgeon shall, on or before the 30th of June of each year, make a full and detailed report of all and singular his doings since his last report to the governor, including his compensation and expenses, and the report shall not exceed one hundred and fifty pages of printed matter.
Persons who may demand his service.	SEC. 5. Whenever the majority of any board of supervisors, city council, trustees of an incorporated town or township trustees, whether in session or not, shall in writing notify the governor of the prevalence of, or probable danger from, any of said diseases, he shall notify the state veterinary surgeon who shall at once repair to the place designated in said notice and take such action as the exigencies may demand, and the governor may in case of emergency appoint a substitute or assistants with equal powers and compensation.
May order the destruction of stock.	SEC. 6. Whenever in the opinion of the state veterinary surgeon the public safety demands the destruction of any stock under the provisions of this act he shall, unless the owner or owners consent to such destruction, notify the governor, who may appoint two competent veterinary surgeons as advisors, and no stock shall be destroyed except upon the written order of the state veterinary surgeon countersigned by them and approved by the governor and the owners of all stock destroyed under the provisions of this act except as hereinafter provided shall be entitled to receive a reasonable compensation therefor, but not more than its actual value in its condition when condemned, which shall be ascertained and fixed by the state veterinary sur-
Stock killed to be paid for.	

geon and the nearest justice of the peace, who, if unable to agree, shall jointly select another justice of the peace as umpire and their judgment shall be final when the value of the stock does not exceed one hundred dollars, but in all other cases either party shall have the right of appeal to the circuit court, but such appeal shall not delay the destruction of the diseased animals. The state veterinary surgeon shall, as soon thereafter as may be, file his written report thereof with the governor, who shall, if found correct, endorse his finding thereon, whereupon the auditor of state shall issue his warrant therefor upon the treasurer of state who shall pay the same out of any moneys at his disposal under the provisions of this act; *provided*, that no compensation shall be allowed for any stock destroyed while in transit through or across this state, and that the word stock, as herein used, shall be held to include only neat cattle and horses.

SEC. 7. The governor of the state, with the state veterinary surgeon, may co-operate with the government of the United States for the objects of this act, and the governor is hereby authorized to receive and receipt for any moneys receivable by this state under the provisions of any act of congress which may at any time be in force upon this subject, and to pay the same into the state treasury to be used according to the act of congress and the provisions of this act as nearly as may be.

SEC. 8. There is hereby appropriated out of any moneys not otherwise appropriated the sum of ten thousand dollars for use in 1884 and 1885, and three thousand dollars annually thereafter, or so much thereof as may be necessary for the uses and purposes herein set forth.

SEC. 9. Any person, except the veterinary surgeons, called upon under the provisions of this act shall be allowed and receive two dollars per day while actually employed.

410.

17 G. A., Ch. 80, § 4.

[19 G. A., ch. 175, § 1, provides that the biennial reports be made to the governor on or before the 15th day of August preceding the regular sessions of the general assembly: See that act, in supplement to page 28.]

411.

APPROPRIATION FOR FISH COMMISSION.

[Twentieth General Assembly, Chapter 144.]

[Section 1, makes a temporary appropriation for the fish commission.]

SEC. 2. There is hereby appropriated an additional sum of \$300 per annum three hundred dollars per annum to be paid by the executive council as it may become due as rental for the use of the property known as the Spirit Lake hatching house.

412.

18 G. A., Ch. 123.

[This act is repealed by 19 G. A., ch. 17.]

414.

SEC. 1491.

There is no appeal from the action of fence viewers: *McKeever v. Jenks*, 59-350.

The decision of fence viewers upon questions within their jurisdiction is conclusive, and the fact that the statute as to these matters denies to the parties a trial in court, either by an appeal or otherwise, does not

render it unconstitutional: *Ibid.*

The statute does not make the fence viewers sole judges of the sufficiency of the fence in an action brought for damages caused by trespassing cattle. The sufficiency may be proved like any other fact: *Noble v. Chase*, 60-261.

415.

SEC. 1495.

In counties where a herd law is in force, a party desiring to use his ground for purposes not requiring a fence in such county, for instance, for raising crops alone, cannot be compelled to contribute to the erection of a partition fence between his land and that of an owner who desires to use his premises for purposes requiring fencing, as for instance, for the raising of stock; and this is true, notwithstanding the provision of § 1508: *Sykes v. Peck*, 58-256.

Land is to be deemed as not used

in common where the use is such that means must be taken to preserve the crops. Where there is no regulation prohibiting stock from running at large, the party desiring to use his land for the raising of crops which must be protected from such stock, must contribute to a partition fence. Where it did not appear that stock was not prohibited from running at large, *h-l-d*, that such fact would not be presumed for the purpose of establishing error in the judgment below: *Hewitt v. Jewell*, 59-37.

417.

SEC. 1507.

Where stock is prohibited from running at large, the owner is not to be deemed chargeable with negligence in allowing his animals to run at large upon unenclosed land of another; and the owner of unfenced premises who makes an excavation

thereon adjacent to the highway and in a place which he knows to be frequented by stock running at large, will be liable for injuries occurring to animals from such excavation: *Haughey v. Hart*, 17 N. W. Rep., 189.

SEC. 1508.

This section does not prevent the rule as to partition fences being different in counties where stock is pro-

hibited from running at large, from what it is in other counties: See note to § 1495.

418.

16 G. A., Ch. 106, § 2.

The language of this statute is not to be so construed as to defeat recovery by a party on the ground that

on some point on his line a hedge could not be grown for a short distance: *McKeever v. Jenks*, 59-300.

422.

SEC. 1523.

The provisions of this chapter are not repealed by 18 G. A., ch. 75, relating to the practice of pharmacy, except, possibly, so far as is necessary

to allow sales of liquors for medical purposes by registered apothecaries: *State v. Mercer*, 58-182.

423.

SEC. 1525.

[20 G. A., ch. 143, § 1, repeals this section and enacts in lieu thereof the following:]

SEC. 1525. Every person who shall manufacture any intoxicating liquors as in this chapter prohibited, shall be deemed guilty of a misdemeanor, and upon his first conviction for said offense, shall pay a fine of two hundred dollars and costs of prosecution, or be imprisoned in the county jail not to exceed six months, and on his second and every subsequent conviction for said offense, he shall pay a fine of not less than five hundred dollars nor more than one thousand dollars and costs of prosecution, and be imprisoned in the county jail one year.

SEC. 1526.

[20 G. A., ch. 143, § 2, amends this section by inserting after the word "to" and before the words "buy and sell intoxicating liquors," the words "manufacture or."]

Even if the pharmacy act (18 G. A., ch. 75) does repeal this section, affecting sales by a registered pharmacist for medicinal purposes, it does not permit such pharmacist to sell intoxicating liquor as a beverage. The pharmacist must act in good faith,

and the mere fact that a person says he wants liquor for medicine will not exonerate the pharmacist for the sale, if the circumstances show that the liquor was sold as a beverage: *State v. Knowles*, 57-669.

424.

SEC. 1527.

[A bill passed both houses of 19 G. A., which, among other provisions, contained a section repealing this section of the code. The bill was presented to the governor, and within thirty days after the adjournment of the general assembly, was deposited by him in the office of the secretary of state, without approval or objection. The bill is not numbered with acts of the 19th G. A., but is printed, with the certificate of the secretary of state as to the foregoing facts, on pages 184 and 185 of the acts of that session. 20 G. A., ch. 143, § 3, amends this section of the Code by inserting after the words "desires to" and before the words "sell said liquors" in the third line of said section the words "manufacture or."]

SEC. 1528.

[20 G. A., ch. 143, § 4, amends this section by adding thereto the words following:]

Provided, that in case of a permit to manufacture intoxicating liquors the penalty of the bond shall be five thousand dollars.

Penalty in
bond of manufacturer.

SEC. 1529.

[Section 3 of the bill of 19 G.A., referred to under § 1527 above, amends this section by striking out the words, "Upon the presentation of such certificate and bond to the county auditor," at the beginning of the section, and inserting in lieu thereof the following: "Upon application for a permit, and filing the proper bond with the county auditor." Other provisions of this bill are inserted in supplement to pages 426 and 450. The bill contains a section repealing all acts, or parts of acts, in conflict therewith.]

425.

SEC. 1531.

[20 G. A., ch. 143, § 5, amends this section by inserting in the second line thereof, after the words "may be" the words "manufactured or."]

SEC. 1535.

[20 G. A., ch. 143, § 6, amends this section by inserting after the words "record of," in the fourth line, the words "*manufacture or.*"]

426.

SEC. 1537.

[The bill of 19 G. A., referred to in supplement to page 424, under Sec. 1527, also amends this section by striking out the words following, to wit: "No person having a permit to sell intoxicating liquors under this chapter shall sell the same at a greater profit than thirty three per cent on the cost of the same, including freights, and." For the peculiar situation of this bill, see the note in supplement to page 424, just referred to. 20 G. A., ch. 143, § 7, amends this section of the Code by adding thereto the words:]

Applicable to manufacturer.

And the provisions of this section shall apply to persons holding a permit to manufacture intoxicating liquors, so far as the same relates to the report; and any such manufacturer shall, within the time specified for parties holding a permit to sell, also report the quantity and kind of liquors by him manufactured since the date of his last report, and also the quantity and kinds of liquors sold by him, and for what purpose and to whom sold.

The provision of the original section as to the time when the report shall be filed is directory, and a failure to file at the time specified will not subject to the penalty provided if it be in fact filed before action for the penalty is commenced: *Abbott v. Sartori*, 57-656.

SEC. 1538.

[20 G. A., ch. 143, § 8 repeals this section and enacts in lieu thereof the following:]

Penalty for selling at greater profit than here allowed.

Penalty for failure to make monthly report.

SEC. 1538. Any person having such permit, who shall sell intoxicating liquors at a greater profit than is herein allowed, shall be liable to treble damages to be recovered by civil action in favor of the party injured. And any person holding a permit, either to manufacture or sell, who shall fail to make monthly returns as herein required, or within five days thereafter, or who shall make a false return, shall forfeit for each offense the sum of one hundred dollars, to be recovered in the name of the state of Iowa, upon the relation of any citizen of the county, by civil action on his bond, with costs, and one half of the sum recovered shall go to the informer and one half shall go to the school fund of the county.

SEC. 1539.

[20 G. A., ch. 143, § 9, amends this section by adding thereto the following:]

One half of the amount so recovered shall go to informer, and the other half shall go to the school fund of the county.

Under this section the seller of liquor to an intoxicated person will be liable although the liquor is bought and paid for by a third person by way of treating such intoxicated person: *State v. Hubbard*, 60-466.

Evidence of intoxication at a period subsequent to the sale of the liquor should not be received to prove that the person to whom it was furnished was intoxicated at the time of such sale: *Ibid.*

427.

SEC. 1540.

[20 G. A., ch. 143, § 10 repeals this section and enacts in lieu thereof the following:]

SEC. 1540. If any person not holding such a permit, by himself or his clerk, servant or agent, shall for himself or any person else directly or indirectly, or on any pretense, or by any device, sell, or in a permit. Penalty for selling without consideration of the purchase of any other property, give to any person any intoxicating liquors, he shall, for the first offense be First offense. deemed guilty of a misdemeanor, and on conviction for said first offense shall pay a fine of not less than fifty nor more than one hundred dollars and costs of prosecution, and stand committed to the county jail until such fine and costs are paid; for the second and every subsequent offense he shall pay on conviction, Second and every subsequent offense. All clerks, Clerks, agents. servants, and agents of whatever kind, engaged or employed in the manufacture, sale, or keeping for sale in violation of this chapter, of any intoxicating liquor, shall be charged and convicted in the same manner as principals may be, and shall be subject to the penalties herein provided. Indictments and information for violations under this section may allege Any number of violations charged in the same party, but the various allegations must be contained in separate counts, and the person so charged may be convicted and punished for each of the violations so alleged as on separate indictments or informations, but a separate judgment must be entered on each count on which a verdict of guilty is rendered. The second and subsequent convictions mentioned in this section shall be construed to mean convictions on separate indictments or information. And in default of the payment of the fines and cost provided for the first conviction under this section, the person so convicted shall not be entitled to the benefit of chapter forty-seven, title twenty-five, of this code, until he shall have been imprisoned sixty days.

428.

SEC. 1542.

[20 G. A., ch. 143, § 11, repeals this section and enacts in lieu thereof the following:]

SEC. 1542. No person shall own or keep, or be in any way concerned, engaged, or employed in owning or keeping any intoxicating liquors with intent to sell the same within this state, or to permit the same to be sold therein in violation of the provisions hereof, and any person who shall so own or keep, or be concerned, engaged or employed in owning or keeping such liquors with any such intent, shall be deemed, for the first offense, First offense. guilty of a misdemeanor; and on conviction for said first offense shall pay a fine of not less than fifty nor more than one hundred dollars and costs of prosecution, and shall stand committed to the county jail until such fine and costs are paid, and in default of such fine and costs, he shall not be entitled to the benefits of In event of chapter forty-seven, title twenty-five, of the code, until he shall

Second and subsequent offense. have been imprisoned sixty days; for the second and every subsequent offense he shall pay a fine of not less than three hundred dollars nor more than five hundred, or be imprisoned in the county jail not more than six months, or by both such fine and imprisonment in the discretion of the court, and upon trial of every indictment or information of violations of the provisions of this section, proof of the finding of the liquor named in the indictment or in the information, in the possession of the accused in any place except his private dwelling house or its dependencies, or in such dwelling house or dependencies, if the same is a tavern, public eating house, grocery or other place of public resort, or in unusual quantities in the private dwelling house or its dependencies of any person keeping a tavern, public eating house, grocery, or other place of public resort in some other place, shall be received and acted upon by the court as presumptive evidence that such liquor was kept or held for sale contrary to the provisions hereof.

Presumptive evidence.

429.

SEC. 1543.

[20 G. A., ch. 143, § 12, repeals this section and enacts in lieu thereof the following:]

Building and contents declared a nuisance. SEC. 1543. In cases of violation of the provisions of either of the three preceding sections or of sections fifteen hundred and twenty-five of this chapter, the building or erection of whatever kind, or the ground itself in or upon which such unlawful manufacture or sale, or keeping with intent to sell, use or give away, of any intoxicating liquor is carried on, or continued, or exists, and the furniture, fixtures, vessels, and contents is hereby declared a nuisance and shall be abated as hereinafter provided. And whoever shall erect or establish, or continue, or use any building, erection or place for any of the purposes prohibited in said sections shall be deemed guilty of a nuisance, and may be prosecuted and punished accordingly, and upon conviction shall pay a fine of not exceeding one thousand dollars and costs of prosecution, and stand committed until the fine and costs are paid. And the provisions of chapter 47, title 25, of this code, shall not be applicable to persons committed under this section. Any citizen of the county where such nuisance exists, or is kept or maintained, may maintain an action in equity to abate and perpetually enjoin the same, and any person violating the terms of any injunction granted in such proceedings shall be punished as for contempt by a fine of not less than five hundred nor more than one thousand dollars, or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment in the discretion of the court.

Penalty for owner.

Chapter 47, title 25, not applicable. Any citizen may maintain action.

Penalty for violating injunction.

433.

SEC. 1549.

An information charging the defendant with selling intoxicating liquor is sufficient: *Forrman v. Hunter*, 59-550.

436.

SEC. 1551.

[20 G. A., ch. 143, § 13 amends this section by adding thereto the following:]

Every peace officer shall give evidence when called upon, of any facts within his knowledge, tending to prove a violation of the provisions of this chapter, but his evidence shall in no case be used against him in any prosecutions against him for a violation of the provisions of this chapter.

SEC. 1553.

[20 G. A., ch. 143, § 14, repeals this section and enacts in lieu thereof the following:]

SEC. 1553. If any express company, railway company, or any agent, or person in the employ of any express company or railroad company, or if any common carrier or any person in the employ of any common carrier, or if any other person shall knowingly bring within this state for any other person, or persons, or corporation, or shall transport between points within the state for any other person or persons or corporation, any intoxicating liquors, without first having been furnished with a certificate from and under the seal of the county auditor of the county to which said liquor is to be transported or is consigned for transportation, certifying that such consignee or person, for or to whom said liquor is to be transported, is authorized to sell such intoxicating liquors in such county, such company, corporation, or persons so offending, and each of them, and any agent of such corporation or company so offending shall, upon conviction thereof, be fined in any sum not exceeding one hundred dollars for each offense and shall stand committed to the county jail until such fine and the costs of prosecution are paid, and one-half of the fine shall go to the informer and the other half shall go to the school fund of the county; and provided further, that the offense herein defined shall be held complete, and shall be held to have been committed in any county of the state through or to which said intoxicating liquors are transported, or in which the same are loaded for transportation; provided further, that it shall be the duty of the several county auditors of this state to issue the certificate herein contemplated, to any person having such permit, and the certificate so issued shall be truly dated where issued, and shall specify the date at which the authority or permit expires, as shown by the county records.

[The same act contains the following:]

SEC. 15. Every person who shall, directly or indirectly, keep or maintain, by himself, or by associating or combining with others, or who shall in any manner aid, assist, or abet, in keeping or maintaining any club room, or other place in which intoxicating liquors is received or kept for the purpose of use, gift, barter, or sale, or for distribution or division among the members of any club or association by any means whatever, and every person who shall use, barter, sell, or give away, or assist or abet another, in bartering, selling, or giving away any intoxicating liquors as received or kept, shall be deemed guilty of a misde-

Penalty. meanor, and upon conviction therefor shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than six months.

Inconsistent statutes repealed.

Proviso.

**Code, § 1555
as passed by
20th G. A., to
remain in
force.**

SEC. 16. All statutes and acts and parts of acts inconsistent with the provisions of this chapter as hereby amended are hereby repealed; *provided*, however, that this repeal shall not affect any act done, any right accruing or which has accrued or been established, nor any suit or proceeding had or commenced in any civil cause before the time such repeal takes effect, and no offense committed, nor penalty or forfeiture incurred, and no suit or prosecution pending when the repeal takes effect, for an offense committed, or for the recovery of a penalty or forfeiture incurred, shall be affected by this repeal, and the provisions of section 1555, as amended and substituted by the act of this general assembly approved March 4, 1884, shall apply and have relation to the provisions of the code as herein amended, and all penalties as herein provided shall be held to apply to intoxicating liquors as defined in said act March 4, 1884.

[The act herein referred to as approved March 4, 1884, is 20 G. A., ch. 8, given under § 1555 below.]

437.

SEC. 1555.

[By 20 G. A., ch. 8, § 1, this section is repealed, and the following enacted in lieu thereof:]

**"Intoxicating
liquors" con-
strued.**

Prohibition.

Penalty.

**Repealing
clause.**

SEC. 1555. Wherever the words intoxicating liquors occur in this chapter, the same shall be construed to mean alcohol, ale, wine, beer, spirituous, vinous and malt liquors, and all intoxicating liquors whatever: and no person shall manufacture for sale, or sell, or keep for sale, as a beverage, any intoxicating liquors whatever including ale, wine and beer. And the same provisions and penalties of law in force relating to intoxicating liquors, shall in like manner be held and construed to apply to violations of this act, and to the manufacture, sale, or keeping for sale, or keeping with intent to sell, or keeping or establishing a place for the sale of ale, wine and beer, and all other intoxicating liquors whatever.

[The same act contains the following:]

SEC. 2. All acts and parts of acts inconsistent with this act are hereby repealed.

The distinction made in this section, as it stood before repeal, between wine made from native and that from foreign grapes, did not render the regulations as to sale of

the latter void, as an improper regulation of inter-state commerce in violation of the federal constitution: *State v. Stucker*, 58-496.

SEC. 1556.

A physician, called to attend a person for an injury received, or for sickness resulting from intoxication, has no claim against the person sell-

ing the liquor, as contemplated by this section: *Sansom v. Greenough*, 55-127.

SEC. 1557.

In order that a right of action may exist, the liquor sold must cause or contribute to intoxication, and the wife must sustain some injury by the intoxication: *Welch v. Jugenheim*, 56-11.

Where plaintiff did not rely on or prove any specific act or acts of intoxication, but it appeared that her husband had been in the habit of becoming intoxicated for many years, procuring liquor from any person who would let him have it, held, that the several persons who had sold him liquor could not be considered as joint wrong-doers, but that each was severally liable for the damage caused by his own acts: *Richmond v. Shick-*

ler, 57-486.

Under this section before the amendment of § 1555, held that there was no right of action for damages caused by the sale of beer, unless sold contrary to the provisions of § 1539: *Myers v. Conway*, 55-166.

Exemplary damages may be awarded in every case brought under this section where there has been a willful violation of the statute, which has occasioned injury, for which a right of action is given. The party injured is entitled to exemplary damages in a proper case, and the awarding of them is not left to the discretion of the jury: *Fox v. Wunderlich*, 29 N. W. Rep., 7.

438.

SEC. 1558.

Both knowledge and assent, on the part of the owner of the premises unlawfully used, must be shown, to render them subject to the lien of a judgment under this section: *Myers v. Kirt*, 57-421.

Facts in a particular case, held, to show knowledge and assent on the part of the owner of the building: *Putney v. O'Brien*, 53-117.

A purchaser of the property occupied and used for purposes of illegal sale, as here specified, who purchases pending an action against the seller and the owner, in which it is sought to make any judgment recovered a lien upon the property, takes subject to lien of any such judgment. The doctrine of *lis pendens* applies: *O'Brien v. Putney*, 55-292.

The opinion in *Loan v. Hiney*, a note of which is at the end of the notes under this section, was modified on rehearing, and as printed in 53-89, holds that where the action is brought jointly against the seller and the owner, the action as against the latter is not an equitable proceeding for enforcement of a lien, but is an action at law in which such defendant has the right to a jury trial.

The consent of the owner need not be shown by any positive or affirmative act, but may be inferred from circumstances and knowledge of the illegal sales under such conditions as properly to call forth a protest, and a failure to make any objection: *Loan*

v. Etzel, 17 N. W. Rep., 611.

Where it is sought to subject property alleged to have been fraudulently conveyed for the purpose of evading the lien of a judgment, to the payment of the same, the action against the grantee is equitable in its nature, and the defendant cannot demand a jury trial: *Buckham v. Grape*, 17 N. W. Rep., 755.

In such an action against the holder of the legal title, who was not a party to the original action in which judgment was recovered, the record of the judgment in the former action may be introduced in evidence for the purpose of showing that the plaintiff has recovered judgment against the defendant in such former action, but not as evidence of the amount for which the lien should be established, except that in no event can the lien be established for any greater amount: *Ibid.*

In order to render property liable to a judgment for damages for the illegal sale of beer to an intoxicated person, under § 1539, it must be shown, not only that the owner had knowledge of and consented to such sales, but also that he knew of the fact of the intoxication of the person to whom the beer was sold; that is, he must not only have knowledge of the sales, but also of the facts rendering such sales illegal: *Myers v. Kirt*, 19 N. W. Rep., 846.

442.

BUREAU OF LABOR STATISTICS.

[Twentieth General Assembly, Chapter 132.]

SECTION 1. There is hereby created a bureau of labor statistics, to be under the control and management of a commissioner thereof, to be appointed as hereinafter provided by this act.

Governor to appoint within 30 days. SEC. 2. The governor shall, within 30 days after the taking effect of this act and biennially thereafter, with the advice and consent of the executive council, appoint a commissioner of labor statistics; the term of office of said commissioner to commence on the first day of April in each even-numbered year and continue for two years and until his successor is appointed and qualified. And said commissioner before entering upon the discharge of his duties shall take an oath or affirmation to discharge the same faithfully, and to the best of his ability; and shall give bond in the sum of two thousand dollars with sureties to the approval of the governor, conditioned for the faithful discharge of his official duties.

Term of office. SEC. 3. Said commissioner shall receive a salary of fifteen hundred dollars per annum, payable monthly, and necessary postage, stationery and office expenses, the said salary and expenses to be paid by the state as the salaries and expenses of other state officers are provided for. He shall have and keep an office in the capitol at Des Moines, in which shall be kept all records, documents, papers, correspondence and property pertaining to his office, and shall deliver them to his successor in office.

Keep an office in capitol. SEC. 4. Said commissioner may be removed from his office by the governor for neglect of duty or malfeasance in office; and any vacancy occurring at any time may be filled by the governor by and with the consent of the executive council.

May be removed by governor. SEC. 5. The duties of said commissioner shall be to collect, assort, systematize and present in biennial reports to the governor on or before the 15th day of August preceding each regular meeting of the general assembly, statistical details relating to all departments of labor in the state, especially in its relations to the commercial, social, educational and sanitary conditions of the laboring classes, and to the permanent prosperity of the mechanical, manufacturing and productive industries of the state, and shall as fully as practicable collect such information and reliable reports from each county in the state the amount and condition of the mechanical and manufacturing interests, the value and location of the various manufacturing and coal productions of the state, also sites offering natural or acquired advantages for the profitable location and operation of different branches of industry. He shall by correspondence with interested parties in other parts of the United States impart to them such information as may tend to induce the location of mechanical and producing plants within the state, together with such other information as shall tend to increase the productions, and consequent employment of producers; and in said biennial report he shall give a statement of the business of the bureau since the last regular report, and shall compile and publish therein such information as

Duties of commissioner.

Statistics to be gathered. —

shall collect from each county.

To correspond with parties throughout the U. S.

shall give statement in biennial report.

may be considered of value to the industrial interests of the state, the number of laborers and mechanics employed, the number of apprentices in each trade, with the nativity of such laborers, mechanics and apprentices' wages earned, the savings from the same, with age and sex of laborers employed, the number and character of accidents, the sanitary condition of institutions where labor is employed, the restrictions, if any, which are put upon apprentices when indentured, the proportion of married laborers and mechanics who live in rented houses, with the average annual rental and the value of property owned by laborers and mechanics; and he shall include in such report what progress has been made with schools now in operation for the instruction of students in the mechanic arts and what systems have been found most practical with details thereof.

Such report when printed shall not consist of more than six hundred printed pages octavo. Report of not more than 600 pages.

Five thousand copies thereof shall be printed and bound uniformly similar to the reports of other state officers as now authorized by law; said reports when published to be disposed of as follows, viz: To the public libraries in the state, to the various trade organizations, agricultural and mechanical societies, and other places where the commissioner may deem proper and best calculated to accomplish the furtherance of the industrial interests of the state. 5,000 copies of report to be printed. Distribution of reports.

SEC. 6. The commissioner shall have power to issue subpoenas for witnesses and examine them under oath and enforce their attendance to the same extent and in the same manner as a justice of the peace; said witnesses to be paid the same fees as are now allowed witnesses before a justice of the peace, the same to be paid by the state. Power of commissioner.

443.

MINES AND MINING.

[18 G. A., ch. 202 is repealed by the following:]

[Twentieth General Assembly, Chapter 21.]

SECTION 1. There shall be appointed by the governor, with the advice and consent of the senate, one state mine inspector, who shall hold his office for two years; subject, however, to be removed by the governor for neglect of duty or malfeasance in office. Said term of office shall commence on the 1st day of April of each even numbered year. Said inspector shall have a theoretical and practical knowledge of the different systems of working and ventilating coal mines, and of the nature and properties of the noxious and poisonous gases of mines, and of mining engineering; and said inspector, before entering upon the discharge of his duties, shall take an oath or affirmation to discharge the same faithfully and impartially, which oath or affirmation shall be indorsed upon his commission, and his commission so indorsed shall be forthwith recorded in the office of the secretary of state, and such inspector shall give bonds in the sum of two thousand dollars, with sureties to the ap-

Inspector's appointment and term.
Same: Qualifications.
Same: Oath.
Same: Bond.

proval of the governor, conditioned for the faithful discharge of his duty.

Same: Duties. SEC. 2. Said inspector shall give his whole time and attention to the duties of his office, and shall examine all the mines in the state as often as his duties will permit, to see that the provisions of this act are obeyed; and it shall be lawful for such inspector to enter, inspect and examine any mine in this state, and the works and machinery belonging thereto at all reasonable times by night or by day, but so as not to unnecessarily obstruct or impede the working of the mines; and to make inquiry and examination into the state and condition of the mine as to ventilation and general security as required by the provisions of this act.

Mine owners' duty.

Record of inspection. And the owners and agents of such mines are hereby required to furnish the means necessary for such duty and inspection, of which inspection the inspector shall make a record noting the time and all the material circumstances; and it shall be the duty of

Fatalities. the person having charge of any mine whenever any loss of life shall occur by accident connected with the workings of such mine, or by explosion, to give notice forthwith by mail or otherwise to the inspector of mines, and to the coroner of the county in which such mine is situated, and the coroner shall hold an inquest on the body of the person or persons whose death has been caused and inquire carefully into the cause thereof, and shall return a copy of the verdict and all testimony to said inspector. No person having a personal interest in, or employed in the management of, or employed in any coal mine shall be qualified to serve on the jury impaneled on the inquest. And the owner or agent of all coal mines shall report to the inspector all accidents to miners, in and around the mines, giving cause of the same; such report to be made in writing, and within ten days from the time any such accidents occur.

Inspector not to be interested

Biennial report.

Salary.

Proviso.

Office in capitol.

Vacancy.

SEC. 3. Said inspector while in office shall not act as an agent or as a manager or mining engineer, or be interested in operating any mine, and he shall, biennially, on or before the fifteenth day of August preceding the regular session of the general assembly, make a report to the governor of his proceedings, and the condition and operations of the mines in this state, enumerating all accidents in or about the same, and giving all such information as he may think useful and proper, and making such suggestions as he may deem important as to further legislation on the subject of mining.

SEC. 4. Said inspector shall receive a salary of seventeen hundred dollars per annum, payable monthly, necessary stationery, and actual traveling expenses, not to exceed \$500 per annum; *provided*, that he shall file at the end of each quarter of his official year, with the auditor of state, a sworn statement of his actual traveling expenses incurred in the performance of his official duty for such quarter. He shall have and keep an office in the capitol at Des Moines in which shall be kept all records and correspondence, papers, apparatus and property pertaining to his duties, belonging to the state, and which shall be handed over to his successor in office.

SEC. 5. Any vacancy occurring when the senate is not in ses-

sion, either by death or resignation, removal by the governor or otherwise, shall be filled by appointment by the governor, which appointment shall be good until the close of the next session of the senate, unless the vacancy is sooner filled as in the first section provided.

SEC. 6. There shall be provided for said inspector all instruments necessary for the discharge of his duties under this act, ^{Instruments.} which shall be paid for by the state, on the certificate of the inspector, and shall be the property of the state.

SEC. 7. The agent or owner of every coal mine shall make or cause to be made, an accurate map or plan of the working of ^{Maps of work-} ^{ing of mines.} such mine on a scale of not less than one hundred feet to the inch, showing the area mined or excavated. Said map or plan shall be kept at the office of such mine. The owner or agent shall, on or before the first day of September of each year, cause to be made a statement and plan of the progress of the workings of such mine up to said date, which statement and plan shall be marked on the map or plan herein required to be made. In case of refusal on the part of said owner or agent for two months after the time designated to make the map or plan, or addition thereto, the inspector is authorized to cause an accurate map or plan of the whole of said mine to be made at the expense of the owner thereof, the cost of which shall be recoverable against the owner in the name of the person or persons making said map or plan. And the owner or agent of all coal mines hereafter wrought out and abandoned, shall deliver a correct map of said mine to the inspector, to be filed in his office.

SEC. 8. It shall be unlawful for the owner or agent of any coal mine worked by a shaft, to employ or permit any person to ^{Outlets or es-} ^{capes.} work therein unless there are to every seam of coal worked in such mine, at least two separate outlets, separated by natural strata of not less than one hundred feet in breadth, by which shafts or outlets distinct means of ingress and egress are always available to the persons employed in the mine; but in no case shall a furnace shaft be used as an escape shaft; and if the mine is a slope or drift opening, the escape shall be separated from the other openings by not less than fifty feet of natural strata, and shall be provided with safe and available traveling ways, and the traveling ways to the escapes in all coal mines shall be kept free from water and falls of roof; and all escape shafts shall be fitted with safe and convenient stairs at an angle of not more than sixty degrees descent, and with landings at easy and convenient distances, so as to furnish easy escape from such mine, and all air shafts used as escapes where fans are employed for ventilation, shall be provided with suitable appliances for hoisting the underground workmen; said appliances to be always kept at the mine ready for immediate use; and in no case shall any combustible material be allowed between any escape shaft and hoisting shaft, except such as is absolutely necessary for operation of the mine; *provided*, that where a furnace shaft is large enough to ^{Proviso.} admit of being divided into an escape shaft and a furnace shaft, there may be a partition placed in said shaft, properly con- ^{Partition in} ^{furnace shaft.} structed so as to exclude the heated air and smoke from the side

- of the shaft used as an escape shaft, such partition to be built of incombustible material for a distance of not less than fifteen feet up from the bottom thereof; and *provided*, that where two or more mines are connected underground, each owner may make joint provisions with the other owner for the use of the other's hoisting shaft or slope as an escape, and in that event the owners thereof shall be deemed to have complied with the requirements of this section. And *provided further*, that in any case where the escape shaft is now situated less than one hundred feet from the hoisting shaft there may be provided a properly constructed underground traveling way from the top of the escape shaft, so as to furnish the proper protection from fire, for a distance of one hundred feet from the hoisting shaft; and in that event the owner or agent of any such mine shall be deemed to have complied with the requirements of this section; and *provided further*, that this act shall not apply to mines operated by slopes or drift openings where not more than five persons are employed therein.
- SEC. 9.** In all mines there shall be allowed one year to make outlets as provided in section eight when such mine is under two hundred feet in depth, and two years when such mine is over two hundred feet in depth; but not more than twenty men shall be employed in such mine at any one time until the provisions of section eight are complied with; and after the expiration of the period above mentioned should said mines not have the outlets aforesaid, they shall not be operated until made to conform to the provisions of section eight.
- SEC. 10.** The owner or agent of every coal mine, whether it be operated by shaft, slope, or drift, shall provide and maintain for every such mine an amount of ventilation of not less than one hundred cubic feet of air per minute for each person employed in such mine, and not less than five hundred cubic feet of air per minute for each mule or horse employed in the same, which shall be distributed and circulated throughout the mine in such manner as to dilute, render harmless, and expel the poisonous and noxious gases from each and every working place in the mine. And all mines governed by the provisions of this act shall be provided with artificial means for producing ventilation, such as exhaust or forcing fans, furnaces, or exhaust steam, or other contrivances of such capacity and power as to produce and maintain an abundant supply of air for all the requirements of the persons employed in the mine; but in case a furnace is used for ventilating purposes it shall be built in such manner as to prevent the communication of fire to any part of the works by lining the upcast with incombustible material for a sufficient distance up from said furnace to ensure safety.
- SEC. 11.** The owner or agent of every coal mine operated by a shaft or slope, in all cases where the human voice cannot be distinctly heard, shall forthwith provide and maintain a metal tube, or other suitable means for communication from the top to the bottom of said shaft or slope, suitably calculated for the free passage of sound therein, so that communication can be held between persons at the bottom and top of the shaft or slope. And there shall be provided a safety catch of approved pattern

and a sufficient cover overhead on all carriages used for lowering and hoisting persons, and on the top of every shaft an approved safety gate, and also approved safety spring on the top of every slope, and an adequate brake shall be attached to every drum or machine used for raising or lowering persons in all shafts or slopes, and a trail shall be attached to every train used on a slope, all of said appliances to be subject to the approval of the inspector.

SEC. 12. No owner or agent of any coal mine operated by shaft or slope shall knowingly place in charge of any engine used for lowering into or hoisting out of such mine persons employed therein, any but experienced, competent and sober engineers, and no engineer in charge of such engine shall allow any person except such as may be deputed for that purpose by the owner or agent, to interfere with it, or any part of the machinery; and no person shall interfere or in any way intimidate the engineer in the discharge of his duties; and the maximum number of persons to ascend out of or descend into any coal mine on one cage shall be determined by the inspector, but in no case shall such number exceed ten, and no person shall ride upon or against any loaded cage or car in any shaft or slope except the conductor in charge of the train.

SEC. 13. No boy under twelve years of age shall be permitted to work in any mine; and parents or guardians of boys shall be required to furnish an affidavit as to the ages of their boys when there is any doubt in regard to their age, and in all cases of minors applying for work the agent or owner of the mines shall see that the provisions of this section *is [are]* not violated.

SEC. 14. In case any coal mine does not, in its appliances for the safety of the persons working therein, conform to the provisions of this act, or the owner or agent disregards the requirements of this act for twenty days after being notified by the inspector, any court of competent jurisdiction, while in session, or the judges in vacation, may, on application of the inspector, by civil action in the name of the state, enjoin or restrain by writ of injunction, the said agent or owner from working or operating such mines with more than ten persons at once, except as provided in sections eight and nine, until it is made to conform with the provisions of this act, and such remedies shall be cumulative, and shall not take the place of, or affect any other proceedings against such owner or agent authorized by law, for the matter complained of in such action; and for any willful failure or neglect to comply with the provisions of this law by any owner, lessee, or operator of any coal mine or opening whereby any one is injured, a right of action shall accrue to the party so injured for any damage he may have sustained thereby; and in case of loss of life by reason of such willful neglect or failure aforesaid, a right of action shall accrue to the widow, if living, and if not living, to the children of the person whose life shall be lost, for like recovery of damages for the injury they shall have sustained.

SEC. 15. Any miner, workman or other person who shall maliciously injure or interfere with any air-course or brattice, or mischief-

Roof support. obstruct, or throw open doors, or disturb any part of the machinery, or disobey any order given in carrying out the provisions of this act, or ride upon a loaded car or wagon in a shaft or slope except as provided in section twelve, or do any act whereby the lives and health of the persons, or the security of the mines and machinery is endangered; or if any miner or person employed in any mine governed by the provisions of this act, shall

Disobedience of orders. neglect or refuse to securely prop or support the roof and entries under his control, or neglect or refuse to obey any order given by the superintendent in relation to the security of the mine in the part of the mine under his charge or control, every such person shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars, or imprisonment in the county jail not exceeding thirty days.

Trial of inspector for malfeasance in office, etc. SEC. 16. Whenever written charges of gross neglect of duty or malfeasance in office against any inspector shall be made and filed with the governor, signed by not less than fifteen miners, or one or more operators of mines, together with a bond in the sum of five hundred dollars, payable to the state, and signed by two or more responsible freeholders, and conditioned for the payment of all costs and expenses arising from the investigation of such charges, it shall be the duty of the governor to convene a board of examiners, to consist of two practical miners, one mining engineer and two operators, at such time and place as he may deem best, giving ten days' notice to the inspector against whom charges may be made, and also the person whose name appears first in the charges, and said board when so convened, and having first been duly sworn or affirmed truly to try and decide the charges made, shall summon any witness desired by either party and examine them on oath or affirmation, which may be administered by any member of the board, and depositions may be read on such examination as in other cases, and report the result of their investigations to the governor, and if their report shows that said inspector has grossly neglected his duties, or is incompetent, or has been guilty of malfeasance in office, it shall be the duty of the governor forthwith to remove said inspector and appoint a successor, and said board shall award the costs and expenses of such investigation against the inspector or person signing said bond.

Miners' right to examine weights. SEC. 17. In all coal mines in this state the miners employed and working therein shall at all proper times have right of access and examination of all scales, machinery or apparatus used in or about said mine to determine the quantity of coal mined for the purpose of testing the accuracy and correctness of all such scales, machinery or apparatus, and such miners may designate or appoint a competent person to act for them, who shall at all proper times have full right of access and examination of such scales, machinery or apparatus, and seeing all weights and measures of coal mined, and the accounts kept of the same, provided not more than one person on behalf of the miners collectively shall have such right of access, examination and inspection of scales, weights, measures and accounts at the same time, and that such

person shall make no unnecessary interference with the use of such scales, machinery or apparatus.

SEC. 18. The owner, agent or operator of any coal mine shall keep a sufficient supply of timber to be used as props, so that supply of the workmen may at all times be able to properly secure the props. workings from caving in, and it shall be the duty of the owner, agent or operator to send down all such props when required.

SEC. 19. Any person willfully neglecting or refusing to comply with the provisions of this act when notified by the mine inspector to comply with such provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months, except when different penalties are herein provided.

SEC. 20. Chapter 202 of the acts of the eighteenth general assembly is hereby repealed. Acts 18th G. A., Ch. 202, repealed.

447.

17 G. A., Ch. 172.

[This act is repealed by the following:]

INSPECTION OF COAL OIL.

[Twentieth General Assembly, Chapter 185.]

SECTION 1. The governor, by and with the advice and consent of the senate, shall appoint a suitable person, resident of the state, who is not interested in manufacturing, dealing in, or vending any illuminating oils manufactured from petroleum, as state inspector of oils, whose term of office shall commence on the first day of April of each even-numbered year, and continue for the term of two years and until his successor is appointed and qualified. It shall be the duty of such state inspector, by himself or his deputies, hereinafter provided for, to examine and test the quality of all such oils offered for sale by any manufacturer, vender, or dealer; and if upon such testing or examination the oils shall meet the requirements hereinafter specified, he shall fix his brand or device, "*Approved, flash test—degrees*" (inserting the number of degrees), with the date, over his official signature, upon the package, barrel or cask containing the same. And it shall be lawful for the state inspector, or his deputies, to enter into or upon the premises of any manufacturer, vender or dealer of said oils, and if they shall find or discover any kerosene oil, or any other product of petroleum kept for illuminating purposes, that has not been inspected and branded according to the provisions of this act, they shall proceed to inspect and brand the same. It shall be lawful for any manufacturer, vender or dealer to sell the oil so tested and approved as an illuminator; but if the oil or other product of petroleum so tested shall not meet said requirements, he shall mark in plain letters on said package, barrel or cask, over his official signature, the words, "*Rejected for illuminating purposes; flash test—degrees*," (inserting the number of degrees). And it shall be unlawful for the owner thereof to sell such oil or other product of petroleum for illuminating purposes. And if any person shall sell or offer for sale any of

Penalty. — such rejected oil or other product of petroleum for such purpose, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a penalty not exceeding three hundred dollars.

May appoint deputies. SEC. 2. The state inspector provided for in this act, is authorized to appoint a suitable number of deputies, which deputies are empowered to perform the duties of inspection, and shall be liable to the same penalties as the state inspector; *provided*, that the state inspector may remove any of said deputies for reasonable cause. It shall be the duty of the inspector and his

Duty of inspector. deputies to provide themselves at their own expense with the necessary instruments and apparatus for testing the quality of said illuminating oils, and when called upon for that purpose to promptly inspect all oils hereinbefore mentioned, and to reject for illuminating purposes, all oils which will emit a combustible vapor at a temperature of one hundred degrees standard Fahrenheit thermometer, closed test, *provided* the quantity of oil used in the flash test shall not be less than one-half pint. The oil tester adopted and recommended by the Iowa state board of health, shall be used by the inspector and his deputies in all tests made by them. And said board shall prepare rules and regulations as to the manner of inspection in the use of the oil tester adopted, which rules and regulations shall be in effect and binding upon the inspector and deputies appointed under this act.

Board of health to adopt tester. SEC. 3. The state inspector before he enters upon the discharge of the duties of his office shall take the oath or affirmation provided by law, and file the same in the office of the secretary of state, and execute a bond to the state of Iowa in a penal sum not less than twenty thousand dollars with sureties thereto, to be approved by the secretary of state, who shall justify as provided by law, and in addition thereto state under oath that they are not interested, directly or indirectly, in manufacturing, dealing in or vending any illuminating oils manufactured from petroleum; such bond to be conditioned for the faithful performance of the duties imposed upon him by this act, and which shall be for the use of all persons aggrieved by the acts of said inspector, or his deputies, and the same shall be filed with the secretary of state.

Inspector to take oath and give bond. Every deputy inspector before entering upon the discharge of his duties, shall take a like oath or affirmation prescribed herein for the state inspector, and execute to the state a bond in the penal sum of five thousand dollars with like conditions and for like purposes, and with sureties thereto who shall justify and have like qualifications as herein provided for the sureties for state inspector, and such sureties shall be approved by the clerk of the district court of the county in which such deputy inspector resides, and said bond and oath shall be filed in the office of such clerk and such deputy inspector shall before entering upon the discharge of his duties forward said clerk's certificate of such filing to the state inspector and to the secretary of state to be placed on file.

Filed with secretary of state. SEC. 4. All inspections herein provided for shall be made within the state of Iowa, and the inspector or deputy inspector shall be entitled to demand and receive for his services from the

Inspection to be made in the state.

owner or party calling on him, or for whom he shall perform the inspection, the sum of forty cents for a single barrel, package or cask; twenty-five cents each when the lot exceeds one but does not exceed ten in number; fifteen cents each when the lot exceeds ten but does not exceed twenty in number; ten cents each when the lot exceeds twenty but does not exceed one hundred in number, and five cents each for all lots exceeding one hundred barrels; but nothing herein shall preclude the inspection of oil in tanks used for transportation on railroads or in storage, *provided*, the inspector or deputy so inspecting the same shall see and know that the identical oil inspected in such tank is placed in the package, barrel or cask upon which the brand or device herein provided for shall be placed and his fees therefor shall be four dollars for each tank. All fees accruing for inspection shall be a lien upon the oil so inspected.

SEC. 5. It shall be the duty of the state inspector and every deputy inspector to keep a true and accurate record of all oils so inspected and branded by him which record shall state the date of inspection, the number of gallons rejected, the number of gallons approved, the number of gallons inspected, the number and kind of barrels, casks or packages, the name of the person for whom inspected and the amount of money received for such inspection; and such record shall be open to the inspection of all persons interested; and every deputy inspector shall return a true copy of such record at the beginning of each month to the state inspector. It shall be the duty of the state inspector to make and deliver to the state auditor for the fiscal period ending the thirteenth day of June, 1885, and every two years thereafter, a report of the inspections made by himself and deputies for such period, containing the information and items required in this act to be made of record, and the same shall be laid before the general assembly. Report to G. A. Report to auditor of state.

SEC. 6. If any person or persons, whether manufacturer, vendee or dealer shall sell or attempt to sell to any person in this state any illuminating oil, the product of petroleum, whether manufactured in this state or not, which has not been inspected as provided in this act, he shall be deemed guilty of a misdemeanor and subject to a penalty in any sum not exceeding three hundred dollars, and if any manufacturer, vendee or dealer in either or any of said illuminating oils shall falsely brand the package, cask or barrel containing the same, as provided in this act, or shall refill packages, casks or barrels having the inspector's brand thereon without erasing such brand, having the oil inspected and such packages, casks or barrels rebranded, he shall be guilty of a misdemeanor and shall be subject to a penalty not exceeding three hundred dollars or be imprisoned in the county jail not exceeding six months or both in the discretion of the court. For falsely branding or re-filling.

SEC. 7. Any person selling or dealing in illuminating oils produced from petroleum who shall sell or dispose of any empty kerosene barrel, cask or package before thoroughly canceling, removing or effacing the inspection brand on the same, shall be guilty of a misdemeanor, and on conviction thereof, shall pay a

Penalty for
using oil not
approved of

fine of one dollar for each barrel, cask or package thus sold or disposed of; and any person who shall knowingly use any illuminating oil, the product of petroleum, for illuminating purposes before the same has been approved by the state inspector of oils, or his deputy, shall be guilty of a misdemeanor, and, on conviction thereof, shall pay a fine in any sum not exceeding ten dollars for each offense.

Adulteration.

SEC. 8. No person shall adulterate with paraffine or other substance, for the purpose of sale or for use, any coal or kerosene oils, to be used for lights, in such a manner as to render them dangerous to use; nor shall any person knowingly sell or offer for sale, or knowingly use any coal or kerosene oil, or any products of petroleum for illuminating purposes which by reason of being adulterated or for any other reason, will emit a combustible vapor at a temperature less than one hundred degrees of standard

Proviso.

Fahrenheit's thermometer, tested as provided in this act; *provided*, that the gas or vapor from said oils may be used for illuminating purposes when the oils from which said gas or vapor is generated are contained in closed reservoirs outside the building illuminated or lighted by said gas. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment in the discretion of the court; *provided further*, that nothing in this act shall be so construed as to prevent the sale for and use in street lamps of lighter products of petroleum, such as gasoline, benzine, benzole, naphtha, or to prevent the use of machines or generators constructed on the principle of the "Davy safety lamp."

Persons
offending to be
prosecuted.

SEC. 9. It shall be the duty of the state inspector, and of any deputy inspector, who shall know of the violation of any of the provisions of this act, to prosecute before a court of competent jurisdiction any person so offending. And in case the state inspector, or any deputy inspector, having knowledge of the violation of any of the provisions of this act, shall neglect to prosecute as required herein, he shall be deemed guilty of a misdemeanor and punished accordingly, and upon conviction, shall be removed from office.

Penalty for
failure to pro-
secute.

SEC. 10. No oil, nor fluid, whether composed wholly or in part of petroleum, or its products, or of other substances or material, which will ignite and burn at a temperature of three hundred degrees of the standard Fahrenheit thermometer, open test, shall be carried as freight, nor shall the same be burned in any lamp, or vessel, or stationary fixture of any kind, in any passenger, baggage, mail or express car on any railroad, nor on any passenger boat moved by steam-power, nor in any street railway car, stage coach, omnibus or other public conveyance in which passengers are carried, within this state. A violation of any of the provisions of this section shall be deemed a misdemeanor, and the offender shall on conviction thereof be fined not less than one hundred dollars, nor more than one thousand dollars, and shall be liable for all damages resulting therefrom.

Penalty.

Oil which will
ignite at 300
degrees prohib-
ited as freight,
etc.

SEC. 11. If any inspector or deputy shall falsely brand or mark any barrel, cask or package, or be guilty of any fraud, deceit, misconduct or culpable negligence in the discharge of his official duties, or shall deal in, or have any pecuniary interest, directly or indirectly, in any oils or fluids used or sold for illuminating purposes, while holding such office he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not exceeding one hundred dollars, or imprisoned not exceeding thirty days, and be liable to the party injured for all damages resulting therefrom.

SEC. 12. It shall be the duty of the governor to remove from office, and to appoint a competent person in the place of any inspector who is unfaithful in the duties of his office.

SEC. 13. Any person who shall knowingly or negligently sell, or cause to be sold, any of the oils mentioned in this act, for illuminating purposes, except for the purposes herein authorized, which are below the standard and test required in this act, shall be liable to any one purchasing said oil, or to any person injured thereby, for all damages resulting from any explosion of said oil.

SEC. 14. Within sixty days after the passage of this act, the state board of health shall make and provide the necessary rules and regulations for the inspection of illuminating oil as contemplated in this act, and on application, shall furnish the inspector and his deputies with the same.

SEC. 15. Chapter 172 of the acts of the seventeenth general assembly and section 3901 of the code are hereby repealed.

Repeal.

448.

18 G. A., Ch. 75.

This act does not repeal any of the provisions of title 11, ch. 6, of the Code, except possibly so far as necessary to allow sales by the registered apoth-

ecaries of intoxicating liquors for medicines: *State v. Mercer*, 58-182; *State v. Knowles*, 57-669.

449.

18 G. A. Ch. 75, § 3.

[19 G. A., ch., 175, § 1, provides that the commissioners of pharmacy shall make biennial reports to the governor, on or before the 15th day of August, preceding the regular sessions of the general assembly: See that act, in supplement to page 28.]

SEC. 4.

[19 G. A., ch. 137, § 1, amends this section by striking out all after the word "thereof," in the fourth line, and enacting in lieu thereof the following:]

Druggists and pharmacists, who were registered without examination, forfeit their registration when they have voluntarily sold, parted with, or severed their connection with the drug business for a period of two years at the place designated in certificate of registration. Should such party who has thus forfeited his registration wish to re-engage in the practice of pharmacy, he is required to be registered by examination as per section 5. Every registered pharmacist, who desires to continue his profession, shall, ^{Renewal cer-}ificate.

on or before the 22d day of March of each year, pay to the commission of pharmacy the sum of one dollar, for which he shall receive a renewal of his certificate unless his name has been stricken from the register for violation of law. It shall be the duty of each registered pharmacist, before changing his locality as designated in his certificate of registration, to notify the secretary of the commission of pharmacy of his new place of business, and for recording the same and certification thereto, the secretary shall be entitled to receive fifty cents for each certificate. It shall be the duty of every registered pharmacist to conspicuously post his certificate of registration in his place of business. Any person continuing in business, who shall fail or neglect to procure his annual renewal of registration, or who shall change his place of business without complying with this section, or who shall fail to conspicuously post his certificate of registration in his place of business, shall for each such offense be liable to a fine of ten dollars for each calendar month during which he is so delinquent.

450.

SEC. 8.

[Section 1 of the bill referred to in supplement to page 442 under §§ 1527 and 1529, amends this section by striking out all after the word "provided," in the fifth line, and inserting in lieu thereof, the following:]

That all the provisions of chapter six, title eleven, of the code of 1873, and of any laws that may be hereafter made, amendatory or in addition thereto, regulating the sale of intoxicating liquors for mechanical, culinary, medicinal or sacramental purposes, shall be applicable to persons selling liquors under this act, or the act to which this is amendatory: *Provided, further,* that any registered pharmacist, who shall be convicted of any violation of said chapter six, title eleven, of the code, or of chapter seventy-five of the laws of the eighteenth general assembly, or any law hereafter made amendatory thereto, shall have his name stricken from the register by the commissioners of pharmacy.

[There may be some doubt as to whether this bill became a law. For particulars as to its return by the governor to the office of the secretary of state, etc., see notes in supplement to page 424.]

SEC. 10.

Penalty.

[19 G. A., ch. 137, § 2, amends this section by striking out all after the word "paid," in the sixth line, and enacting in lieu thereof the following:] to the treasurer of the commission of pharmacy, whereupon the secretary of said commission shall issue such license for one year. Any person violating this section shall be deemed guilty of a misdemeanor, and shall, upon conviction, pay a fine of not less than twenty-five dollars; all moneys received for licenses to be reported to the auditor of state. The sum of one thousand dollars per year, or as much thereof as may be necessary, is hereby appropriated out of the moneys so received for licenses, for the expenses of said commission, all exceeding said amount to be paid into the state treasury.

Fines paid to auditor of state.

Expenses of commission.

SEC. 11.

[19 G. A., ch. 137, § 3, amends this section by adding at the end thereof the following words, "nor more than two hundred dollars."]

SEC. 12.

[19 G. A., ch., 137, § 4, amends this section by adding at the end thereof the following words: "*manufactured in the state, when same are sold and distributed by agents from an established place of business.*"]

PRACTICE OF DENTISTRY.

[Nineteenth General Assembly, Chapter 36.]

SECTION. 1. It shall be unlawful for any person who is not at the time of the passage of this act, engaged in the practice of dentistry in this state to commence such practice unless such person shall have received a license from the board of examiners, or some member thereof as hereinafter provided, or a diploma from the faculty of some reputable dental college duly authorized by the laws of this state, or by some other of the United States, or by the laws of some foreign country in which college or colleges there was, at the time of the issue of such diploma, annually delivered a full course of lectures and instructions in dental surgery.

Dentist must
have license or
diploma.

SEC. 2. A board of examiners is hereby created whose duty it shall be to carry out the purposes and enforce the provisions of this act. The members of said board shall be appointed by the governor, and shall consist of five practicing dentists, who shall have been engaged in the continuous practice of dentistry in the state for five years or over, at the time of, or prior to, the passage of this act. The term for which the members of said board shall hold their office shall be five years, except that the members of the board first to be appointed under this act shall hold their offices for the term of one, two, three, four and five years respectively, and until their successors shall be duly appointed. In case of vacancy occurring in said board, such vacancy shall be filled by the governor.

SEC. 3. Said board shall choose one of its members president, and one the secretary thereof; and it shall meet at least once in each year, and as much oftener, and at such times and places, as it may deem necessary. A majority of said board shall at all times constitute a quorum, and the proceedings thereof shall at all reasonable times be open to public inspection.

SEC. 4. It shall be the duty of every person who is engaged in the practice of dentistry in this state, within six months from the date of the taking effect of this act, to cause his or her name and residence, or place of business, to be registered with the said board of examiners, who shall keep a book for that purpose; and every person, who shall so register with said board as a practitioner of dentistry, may continue to practice the same as such without incurring any of the liabilities or penalties of this act.

SEC. 5. No person whose name is not registered on the books of said board as a regular practitioner of dentistry, within the limit prescribed in the preceding section, shall be permitted to practice dentistry in this state until such person shall have been duly examined by said board, and regularly licensed in accordance with the provisions of this act.

Persons
registered must
be examined.

Examination
and license.

SEC. 6. Any and all persons, who shall so desire, may appear before said board at any of its regular meetings, and be examined with reference to their knowledge and skill in dental surgery, and if such person shall be found, after having been so examined, to possess the requisite qualifications, said board shall issue a license to such person to practice dentistry in accordance with the provisions of this act. But said board shall at all times issue a license to any regular graduate of any reputable dental college, without examination, upon the payment by such graduate to the said board, of a fee of one dollar. All licenses issued by said board shall be signed by the members thereof and be attested by its president and secretary; and such license shall be *prima facie* evidence of the right of the holder to practice dentistry in the state of Iowa.

Temporary li-
cense.

SEC. 7. Any member of said board shall issue a temporary license to any applicant upon the presentation by such applicant of the evidence of the necessary qualifications to practice dentistry; and such temporary license shall remain in force until the next regular meeting of said board occurring after the date of such temporary license and no longer.

Penal'y.

SEC. 8. Any person who shall violate any of the provisions of this act shall be liable to prosecution, before any court of competent jurisdiction, upon information, and upon conviction shall be fined not less than twenty-five dollars, nor more than fifty dollars, for each and every offense.

Fees : Compen-
sation.

SEC. 9. In order to provide the means for carrying out and maintaining the provisions of this act, the said board of examiners may charge each person applying to or appearing before them for examination for license to practice dentistry a fee of two dollars; and out of the funds coming into the possession of the board from the fees so charged, the members of said board may receive as compensation the sum of five dollars for each day actually engaged in the duties of their office. And no part of the salary or other expenses of the board shall ever be paid out of the state treasury. All moneys received in excess of said per diem allowance shall be held by the secretary of said board as a special fund for meeting the expenses of said board, he giving such bond as the board shall from time to time direct. The said board shall make an annual report of its proceedings to the governor, by the fifteenth of November of each year, together with an account of all moneys received and disbursed by them pursuant to this act.

Report.
Registry of li-
censes.

SEC. 10. Any person who shall be licensed by said board to practice dentistry, shall cause his or her license to be registered with the county clerk of any county, or counties, in which such person may desire to engage in the practice of dentistry; and the county clerks of the several counties in this state shall charge for registering such license a fee of twenty-five cents for each registration. Any failure, neglect, or refusal on the part of any person holding such license to register the same with the county clerk, as above directed, for a period of six months, shall work a forfeiture of the license; and no license, when once forfeited, shall be restored, except upon the payment to the said board of exam-

Penalty.

iners of the sum of twenty-five dollars, as a penalty for such neglect, failure, or refusal.

SEC. 11. Nothing in this act shall be construed to prevent persons from extracting teeth.

452.

18 G. A., Ch. 151, § 3.

[19 G. A., ch. 140, amends this section by adding thereto the following:]
For which service the clerk shall receive, in addition to the compensation already allowed him by law, the sum of ten cents for each birth, marriage, or death so recorded by him, and the further sum of ten cents for each one hundred words of written matter contained in said report, the same to be paid out of the county fund.

SEC. 5.

This statute, so far as it authorizes the board of health to require a physician to report information as to births and deaths, is not unconstitutional. Its objects are within the authority of the state, and may be attained in the exercise of its police power: *Robinson v. Hamilton*, 60-134.

453.

18 G. A., Ch. 151, § 10.

[20 G. A., ch. 173, amends this section by striking out the word "quarterly" in the eighth line of said section and inserting in lieu thereof the word "monthly."]

SEC. 11.

[19 G. A., ch. 175, § 1, provides that the report be made biennially to the governor, on or before the 15th day of August preceding the regular session of the general assembly: See that act, in supplement to page 28.]

SEC. 12.

[20 G. A., ch. 173, amends this section by inserting after the word "paid," in the sixth line, the word "monthly."]

455.

SEC. 21.

The board of health may, under this section, provide a temporary building to which infected persons may be removed for isolation, and the county will be liable for the expenses thereof in case of the inability of the infected person or persons to pay such charge. Whether the infected persons would be liable for such expenses in any event, doubted: *Staples v. Plymouth Co.*, 17 N. W. Rep., 569.

The sick person is properly chargeable with all the expenses which may be incurred under this and the following section, as including expenses of removal, if that is adopted, or isolation, if that is adopted; and, in the latter case, the expense of food furnished to the entire family during the period of isolation may be included; also, the supplying of clothing in place of clothing worn by the family which is burned. For all such expenses which the sick person or those liable for his support are unable to pay, the county is ultimately liable: *City of Clinton v. County of Clinton*, 61-205.

It is the imperative duty of the local board of health to provide for a sick person, regardless of his settlement—as where the person is a foreigner, not yet having acquired a settlement. The sick or afflicted person must in such case be deemed to belong to the county where the relief becomes necessary: *Ibid.*

460.

SEC. 1583.

[19 G. A., ch. 175, § 1, provides that the biennial reports be made to the governor on or before the 15th day of August preceding each regular session of the general assembly: See that act, in supplement to page 23.]

STATE EDUCATIONAL BOARD OF EXAMINERS.

[Nineteenth General Assembly, Chapter 167.]

Who constitute board. SECTION 1. The superintendent of public instruction, the president of the state university, the principal of the state normal school, and two persons, to be appointed by the executive council, one of whom shall be a woman, for terms of four years: *Provided*, that of the two first appointed, one shall be for two years: *and provided further*, that no one shall be his own successor in said appointments: are hereby constituted a state board of examiners, with the superintendent of public instruction as, ex-officio, its president.

Public examination. SEC. 2. The board shall meet at such times and places as its president shall direct for transaction of business, and shall hold annually at least two public examinations of teachers at each of which examinations one member of the board shall preside, assisted by such well qualified teachers, not to exceed two in number, as the board of examiners may elect. Said board may adopt such rules, not inconsistent herewith and with the statutes of Iowa, as they may deem proper; and said board shall keep a full record of their proceedings, and a complete register of all persons to whom certificates and diplomas are issued:

State certificate and diplomas. SEC. 3. Said board shall have power to issue state certificates and state diplomas to such teachers as are found, upon examination, to possess good moral character, thorough scholarship, clear and comprehensive knowledge of didactics, and successful experience in teaching.

Branches for examination. SEC. 4. Candidates for state certificates shall be examined upon the following branches: orthography, reading, writing, arithmetic, geography, English grammar, book-keeping, physiology, history of the United States, algebra, botany, natural philosophy, drawing, civil government, constitution and laws of Iowa, and didactics; and candidates for state diplomas shall pass examination upon all branches required by candidates for state certificates and in addition thereto in geometry, trigonometry, chemistry, zoology, geology, astronomy, political economy, rhetoric, English literature and general history, and such other branches as the board of examiners may require.

How long valid: revocation. SEC. 5. A state certificate shall authorize the person to whom it is issued to teach in any public school of the state for the term of five years from the date of its issue, and a state diploma shall be valid for the life of the person to whom it is issued: *Provided*, that any state certificate, and any state diploma, may be revoked by the board of examiners for any cause of disqualification, on well-founded complaint entered by any county superintendent of schools.

Fees. SEC. 6. The fee for each state certificate shall be three dollars,

and for each state diploma five dollars, which fee shall be paid before examination to such person as the board of examiners may designate from their own number, and the same shall be paid into the state treasury, when so collected: *Provided*, that if said applicant shall fail in said examination, one-half of the fee shall be returned.

SEC. 7. Every holder of a state certificate, or of a state diploma shall have the same registered by the county superintendent of schools of the county in which he wishes to teach, before entering upon his work, and each county superintendent of schools is required to include in his annual report to the superintendent of public instruction a full account of the registration of state certificates and diplomas.

SEC. 8. Each member of the state education board of examiners, and each person appointed by said board to assist in conducting examinations as provided for in section two of this act, shall be entitled to receive for the time actually employed in such service his necessary expenses: *And provided further*, that each member of said board, not a salaried officer, shall, in addition to his necessary expenses, receive the sum of three dollars per day he or she is actually employed in said examination, which amounts shall be certified by the superintendent of public instruction; and the auditor of state is hereby authorized to audit and draw his warrant for the same upon the treasurer of state: *Provided*, the aggregate amount for any one year shall not exceed three hundred dollars.

SEC. 9. The board of examiners shall keep a detailed and accurate account of all moneys received and expended by them, which, with a list of the names of persons receiving certificates and diplomas, shall be published by the superintendent of public instruction in his annual report.

464.

SEC. 1601.

[19 G. A., ch. 175, § 1, seems to provide that the biennial reports be made to the governor on or before the 15th of August preceding the regular session of the general assembly: See that act, in supplement to page 28.]

AFTER SEC. 1603.

[Twentieth General Assembly, Chapter 115.]

SECTION 1. There is hereby appropriated out of any money in the state treasury not otherwise appropriated, for the support \$8,000 annually, of the state university in the several departments and chairs, and appropriated in aid of the income fund and for the development of the institution, the sum of eight thousand dollars annually.

465.

17 G. A., Ch. 45.

[19 G. A., ch. 175, § 1, provides for a biennial report to the governor on or before the 15th of August preceding each regular session of the general assembly. See that act, in supplement to page 28.]

SEC. 1604.

[20 G. A., ch. 76, § 1, amends this section by striking out all that portion thereof after the word "board" in the eleventh line and adding in lieu thereof the following: "of trustees consisting of one person from each congressional district of the state. But the present board of trustees shall continue as members of the board of trustees from their several congressional districts until their terms of office expire."]

SEC. 1605.

[20 G. A., ch. 76, § 2, repeals this section and enacts in lieu thereof the following:]

Election and term of trustees.

Board of trustees to fill vacancies.

Persons not eligible.

SEC. 1605. That of the members of said board representing the different congressional districts there shall be elected by this general assembly one to serve two years, four to serve four years, and three to serve six years from the first day of May, A. D. 1884, and as the term of office of the members of the board expire, the general assembly shall elect their successors whose term of office shall be six years. The board of trustees shall fill all vacancies occurring therein, except when the legislature is in session, and the persons so appointed shall hold their office until the next session of the general assembly after such appointment: but neither the president nor any other officer or employe of the college and farm, nor any member of the general assembly, shall be eligible as trustees.

468.

AFTER SEC. 615.

SALE OR LEASE OF AGRICULTURAL COLLEGE LANDS.

[Twentieth General Assembly, Chapter 72.]

Trustees authorized to sell.

How sold.

Deferred payment.

Failure to pay interest for 60 days, a forfeiture.

Trustees may extend time.

Trustees may lease for ten years at 8 per cent.

Lessee may purchase.

SECTION 1. The trustees of the Iowa state agricultural college and farm are hereby authorized to sell the lands granted to the state of Iowa by an act of congress entitled "An Act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and mechanic arts," approved July 2d, 1862. Such sale shall be for cash, or upon a partial credit not exceeding ten years, at such appraised value as shall be fixed by said trustees. All deferred payments shall draw interest at the rate of eight per cent per annum, payable annually in advance.

Upon a failure to pay the annual interest or principal within sixty days after it becomes due and within sixty days after notice thereof in writing by mail or otherwise from the trustees or land agent of said college to the holder of the lease shall have been given, the purchaser shall forfeit all claim to said land and the improvements made thereon and all sums paid on said contract, unless in the opinion of the trustees an extension should be allowed.

SEC. 2. Said trustees are also authorized to lease the said lands for a term not exceeding ten years at an annual rent equal to eight per cent per annum upon the appraised value of the tract, payable annually in advance; and the said lessee, his heirs or assigns, shall have the privilege of purchasing said tract of land at the expiration of the lease at the appraised value stated

in the lease. The lessee failing to pay the annual interest upon said lease within sixty days after the same becomes due and within sixty days after notice thereof in writing by mail or otherwise from the trustees or land agent of said college to the holders of the lease shall have been given, shall forfeit his lease together with the interest paid thereon and improvements made on said lands.

SEC. 3. The said trustees are authorized at their option to cause to be *revived* [reviewed] the purchase price of the land so sold or leased, or which has been heretofore sold or leased before the same becomes due, upon such terms and conditions of payment as said trustees may deem for the best interest of the institution.

Said trustees may also renew leases as they expire, and when so renewed the leasehold estate shall be subject to taxation as provided in chapter one hundred and sixty-nine of the acts of the nineteenth general assembly entitled, "An Act to provide for taxation of leasehold estates in Agricultural College Lands," approved March 25th, 1882.

SEC. 4. Leases heretofore issued by said trustees under the authority of former acts of the general assembly of this state and all renewals of such leases shall be deemed assignable and all transfers of such leases or renewals heretofore made shall be valid, and the owner, whether holding one or more than one such lease or renewal, who has made the annual payments therein required, shall be entitled to all the benefits of such contract or contracts, and shall have the privilege of purchasing the tract or tracts of land so held by him as provided in the lease, and upon payment of the purchase money shall be entitled to a patent for the land described in said lease or leases.

SEC. 5. The said trustees are hereby authorized in like manner to sell or lease the lands belonging to the said Iowa agricultural college acquired by purchase with accumulated interest fund.

SEC. 6. Whenever a sale shall be made of any of said lands as hereinbefore provided, the president of the said agricultural college shall issue to the purchaser a certificate, countersigned by the secretary of said board, stating the fact of purchase, the name of the purchaser, description of land and the appraised value thereof. Upon payment of such purchase price to the treasurer of state the purchaser or his assignee shall be entitled to a patent or patents for such tract or tracts of land. And upon presentation of such certificate to the secretary of state with the receipt of the treasurer of state showing full payment of the purchase money and stating the amount thereof, said secretary of state shall issue to the purchaser or to his assignee a patent or patents for the tract or tracts of land therein described, which patents shall be signed by the governor and secretary of state, as other patents or deeds for lands conveyed by the state, and shall vest in the purchaser all the right, title and interest of the state and of said college in and to the lands therein described.

SEC. 7. The principal of all moneys collected under the provisions of this act, shall be paid to and held by the treasurer of

Lease forfeited
for non-pay-
ment of in-
terest.

Trustees may
cause purchase
price to be re-
viewed.

May review
leases.

Subject to tax-

All leases
assignable.

Transfers here-
tofore, made
valid.

Lands
acquired by
purchase,
subject to
some con-
ditions.

President and
secretary to
issue certificate
to purchaser.

Amount to be
paid the
treasurer of
state.

Secretary of
state to issue
patent.

Title to vest in
purchaser.

Principal to be held by treasurer of state, and shall be drawn out for the purpose of investment on the order of the board of trustees, only when required to complete a loan. The interest collected shall be paid to the treasurer of the college upon the order of the board of trustees.

How drawn out.
Chapter 71
15th G. A.
repealed.

SEC. 8. Chapter seventy-one of the acts of the fifteenth general assembly entitled, "An Act to regulate the leasing of the lands belonging to the Iowa State Agricultural College," approved March 19th, 1874, and all acts and parts of acts conflicting with the provisions of this act are hereby repealed.

469.

SEC. 1617.

[This section is evidently superseded by the following:
[Twentieth General Assembly, Chapter 193.]

Management and investment of endowment fund vested in trustees.

SECTION 1. The board of trustees of the Iowa state agricultural college and farm, are hereby charged and intrusted with the management and investment of the endowment fund of said college, derived from the sale of the lands granted to the state of Iowa by an act of congress entitled, "An Act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and mechanic arts," approved July 2d, 1862. Such investment may be in the stocks of the United States, or of the states, or some other safe stocks yielding not less than five per centum of the par value of said stocks, as provided by act of congress granting said lands. Before the purchase of any such stocks shall be made the proposed investment shall be submitted to and approved by the state executive council.

Approved by executive council.

Funds: how loaned.

First.

Second.

Third.

Fourth.

SEC. 2. Said board of trustees are also authorized to loan said fund upon approved real estate security in accordance with the following rules and regulations:

FIRST. Each loan shall be for a term not exceeding ten years, at a rate of interest to be fixed by said board not exceeding ten per centum, and not less than six per cent per annum, payable annually.

SECOND. Each loan shall be secured by a mortgage paramount to all other liens upon improved farm lands in the state of Iowa, and shall not exceed forty per cent of the cash value of the mortgaged premises, exclusive of buildings.

THIRD. Principal and interest shall be payable to the order of said board at the office of the state treasurer at Des Moines, Iowa, and the notes and mortgages shall provide for the payment, by the borrower, of all expenses, attorneys' fees and costs, which shall be incurred in collecting the principal and interest of such loans, or any part thereof, by reason of the default of such borrower.

FOURTH. A register containing a complete abstract of such loan, and showing its actual condition shall be kept by the secretary of said board, and shall be at all times open to inspection. The attorney general, under the direction of the executive council, shall prepare all blanks, forms and instructions necessary to carry into effect the provisions of this section, and to

keep the funds loaned as herein provided secure and unimpaired.

SEC. 3. For the purpose of carrying into effect the provisions of this act, the said trustees are authorized to appoint a financial agent to receive applications and negotiate loans in accordance with the conditions herein contained. The trustees shall require any agent appointed under this act, before entering upon the discharge of his duties, to give bond with approved sureties in a penal sum to be determined by said board of trustees, which shall be at least double the amount of funds liable to come into his hands at any time, and shall be for the use and benefit of said Iowa state agricultural college and farm, and actions for breach of the conditions hereof may be brought in the name of said board of trustees. The appointment of such agent, and the bond given by him, shall be subject to approval by the state executive council. Such agent shall hold his office during the pleasure of the board of trustees.

SEC. 4. The secretary of the board of trustees shall semi-annually report to the executive council, and to the board of trustees at every meeting, all loans made under this act, giving a description of the security taken and the value thereof, the name of the borrower, length of time, and amount of loan and rate of interest.

SEC. 5. Foreclosure of mortgages taken under this act may be made in the name of the board of trustees of the Iowa state agricultural college and farm, and in case of sale on execution under such foreclosure the mortgaged premises may be bid off in the name of the state of Iowa, and if deed therefor be made, said premises shall be held by the state in trust for the benefit of said agricultural college. Such land shall be subject to lease or sale the same as other land belonging to the college.

SEC. 6. The agent provided for by section three of this act shall receive compensation to be fixed by said board of trustees at a rate not exceeding the sum of two thousand dollars per annum, and all necessary expenses while necessarily away from his office, in the discharge of his official duties, to be paid as other officers, out of the treasury of the state.

SEC. 7. Moneys collected from delinquents shall be paid at once into the state treasury. The principal of the fund shall be kept by the treasurer of state and shall be drawn out for the purpose of investment as hereinbefore provided upon the order of the board of trustees subject to such restrictions as may be imposed by the attorney general and the state executive council. The treasurer of state shall make monthly reports to the secretary of the board of trustees showing all payments of principal and interest and shall remit to the treasurer of the college all interest then in his hands, as shown by such reports.

SEC. 8. All acts and parts of acts conflicting with the provisions of this act are hereby repealed.

TAXATION OF LEASEHOLD ESTATES IN AGRICULTURAL COLLEGE LANDS.

[Nineteenth General Assembly, Chapter 169.]

SECTION 1. In all cases where leases of lands executed by the trustees of the agricultural college have been, or shall hereafter be, renewed ten years after the date of the original lease has expired, the interest in such lands of the lessee, his heirs, or assigns shall be subject to assessment and taxation as real property. The value of such interest shall be ascertained by deducting from the value of such lands and the improvements thereon the amount required to be paid by the terms of the lease to acquire the title thereto. Such leasehold interest shall be assessed, taxed, and sold for delinquent taxes, and redemption from such sale be made or tax deed be issued, in all respects like other real estate, save as herein otherwise provided, with the same rights, liabilities, and effect, and the treasurer's tax deed shall operate as a full and complete assignment of said leasehold interest to the grantee named in such deed.

Payments after sale; redemption. SEC. 2. At any time after such leasehold interest shall have been sold for delinquent taxes the holder of the certificate of purchase may pay any interest or principal due by the terms of the lease, or do any other act necessary to prevent a forfeiture of such lease by the terms thereof, and the proper voucher for such payment shall be filed with the auditor of the county where the land is situated. No redemption from a sale of such land shall be allowed until the amounts paid by the holder of the certificate of sale by virtue of this act, together with interest thereon at eight per cent. per annum from the dates of payment shall be paid to the auditor, with all other amounts required by law to complete such redemption, to be by him paid to the holder of such certificate, and the certificate of redemption shall show the amounts paid by the party redeeming on account of such lease.

Purchase. SEC. 3. Where any leasehold interest has been sold for delinquent taxes and a treasurer's deed issued thereon, the grantee in such deed named, his heirs or assigns, shall be entitled to purchase the land conveyed by such deed at the price and on the terms specified in the lease therefor then in force, and to receive a patent therefor. In case such lease shall expire before the holder of the certificate of sale shall be entitled to a treasurer's deed, such holder may pay the amount required by the terms of such lease to acquire the title in fee to said land, and receive a conveyance of the same, and after such conveyance is made, no redemption from the tax sale of the land thereby conveyed shall be allowed.

Certificate of sale, or tax deed. SEC. 4. The right of the tax sale purchaser or his assigns to pay any amount due by virtue of any lease shall be evidenced by a copy of the certificate of sale or treasurer's deed, as the case may be, duly certified by the officer, or officers, executing the same, and in case no tax deed has been issued the auditor of the proper county shall further certify that redemption from the tax sale has not been made. Such copy and certificate shall be filed with the secretary of the board of trustees and become a part of the records of his office.

SEC. 5. The board of trustees shall cause to be certified to the auditor of each county in which leased college lands are situated, on or before the first day of April, A. D. 1882, and on or before the fifth day of January of each year thereafter, a list of such lands held under renewed leases, together with the name of each lessee thereof, the date and terms of each lease, the amounts to be paid thereunder, and the dates when such amounts will become due. Each auditor of a county in which such lands are situated shall deliver to the assessor of each township, which contain any of said lands, on or before the first day of April, A. D. 1882, and on or before the fifteenth day of January for each year thereafter, a list of such land situated in such township, together with a statement showing the lessee of each tract and the amounts to be paid by virtue of the lease thereon, and the dates of payment.

SEC. 6. Nothing in this act shall be so construed as to authorize the taxation of any leasehold interest under and by virtue of this act, for any year prior to 1882.

SEC. 7. All acts and parts of acts, so far as they conflict with this act, are hereby repealed.

Board to certify
to county au-
ditor's lists of
lands subject to
taxation.

470.

SEC. 1621.

[20 G. A., ch. 27, repeals this section and enacts in lieu of it the following:]

SEC. 1621. There shall be adopted and taught at the state agricultural college a broad, liberal and practical course of study in Course of study which the leading branches of learning shall relate to agriculture and the mechanic arts, and which shall also embrace such other branches of learning as will most practically and liberally educate the agricultural and industrial classes in the several pursuits and professions of life including military tactics.

[Sec. 2 of the same act repeals "all acts and parts of acts inconsistent with this act."]

471.

SEC. 1632.

[19 G. A., ch. 175, § 1, provides that the biennial reports shall be made to the governor on or before the 15th day of August preceding the regular session of the general assembly: See that act, in supplement to page 28.]

475.

INSTITUTION FOR FEEBLE-MINDED CHILDREN.

[Nineteenth General Assembly, Chapter 40.]

SECTION 1. Chapter 152 of the sixteenth general assembly, and chapter 164 of the eighteenth general assembly, are hereby repealed, and the following enacted in lieu thereof:

SEC. 2. The institution located at Glenwood, in Mills county, and heretofore known as the Asylum for Feeble-Minded Children, shall by this act be termed the Institution for Feeble-Minded Children. Said institution shall be under the manage-

16 G. A. Ch. 152
and 18. G. A.
Ch. 164 repeal-
ed.

name; board
of trustees.

ment of a board of trustees, consisting of three persons, two of whom shall constitute a quorum for the transaction of business. Said trustees shall be elected by the general assembly, one of whom shall be elected for two years, one for four years, and one for six years; and at least one of them shall be a resident of Mills county, and each general assembly shall hereafter elect one trustee for six years.

Objects of institution.

SEC. 3. The purposes of this institution are to train, instruct, support and care for feeble-minded children.

Superintendent.

SEC. 4. The board of trustees shall appoint a superintendent, whose duty it shall be, under the direction of the board, to superintend the care, management, training and instruction of the wards of the institution, and the management of its finances. He shall give a bond to the state of Iowa, in such a sum as the board shall require, to be approved by the board, conditioned for the faithful performance of his duties. He shall make quarterly settlements with the treasurer of the board.

Powers and duties of trustees; officers; compensation.

SEC. 5. The board of trustees shall have the general supervision of the institution and all its affairs, and shall adopt such rules and regulations for the management of the same as will carry into effect the provisions and purposes of this act. The trustees shall elect one of their number president; and they shall elect a secretary and treasurer, who may or may not be members of the board. The treasurer shall give bonds, as the board may require, conditioned for the faithful accounting of all moneys that come into his hands. The secretary and treasurer, if not a member of the board, shall receive three dollars per day for the time he is actually employed during the sessions of the board, or under their direction. Said board shall meet at the institution on the first Wednesday in October of each year, and every three months thereafter, and at such other times as two of their number may decide. The full compensation of the members of the board shall be four dollars per day for time actually employed, and mileage, such as is allowed by law to members of the general assembly.

Who entitled to admission.

SEC. 6. Every child and youth residing in the state, between the ages of five and eighteen years, who, by reason of deficient intellect, is rendered unable to acquire an education in the common schools, shall be entitled to receive the physical and mental training and care of this institution at the expense of the state; and it shall be the duty of the county superintendent of common schools in each county to report to the superintendent of the institution, on the first day of October of each year, the name, age, and post-office address of every person in his county between the ages of five and twenty-one, who by reason of feeble mental and physical condition is deprived of a reasonable degree of benefit from the common schools. He shall also state in said report whether or not such person has ever attended school, and how long, if at all; and he shall also give the post-office address of the parent, guardian, or nearest friend of such person.

County superintendent to report.

SEC. 7. There shall be received into the institution feeble-minded children between the ages of five and eighteen years, whose admission shall be applied for as follows:

Method of admission.

First. By the father and mother, or either of them, if the other be adjudged insane.

Second. By the guardian duly appointed.

Third. In all other cases, by the board of supervisors of the county in which the child resides. It shall be the duty of such board of supervisors to make such application for any such child that has no living sane parent or guardian in the state, unless such child is comfortably provided for already.

SEC. 8. The forms for applications for admission into the institution shall be such as the trustees shall prescribe, and each application shall be accompanied by answers to such interrogatories as the trustees shall require propounded.

SEC. 9. For the support of said institution there is hereby appropriated, out of any money in the treasury not otherwise appropriated, the sum of ten dollars per month for each inmate therein supported by the state, counting the actual time such person is an inmate and supported by the institution; and upon presentation to the auditor of state of a sworn statement of the average number of inmates supported in the institution by the state, for the preceding month, the auditor of state shall draw his warrant upon the treasurer of the state for such sum. For the ordinary expenses of the institution, including furniture, books, school apparatus, and compensation of officers and teachers, there is hereby appropriated the sum of eleven thousand dollars annually, or so much thereof as may be necessary, which may be drawn quarterly upon the order of the trustees.

SEC. 10. When the pupils of the institution are not otherwise provided with clothing, the same shall be furnished by the superintendent, who shall make out an account of the cost thereof, in each separate case, together with the cost of transmission of the pupil, when the latter is not otherwise provided for; and said account shall be made against the parent or guardian, if there be such, or otherwise against the inmate; and when said account shall have been certified to by the superintendent, it shall be presumed to be correct in all courts, and shall be transmitted by mail to the county auditor of the county from which said pupil was sent to the institution. The said auditor shall then proceed at once to collect the same, by suit, if necessary, in the name of the county, and pay the same into state treasury. The superintendent shall, at the same time, transmit a duplicate of the same account to the auditor of state, who shall credit the same to the account of the institution, and charge it to the proper county: *Provided,* [if] it shall appear by the affidavit of three disinterested citizens of the county, not kin to the inmate, that the parent or guardian would be unreasonably oppressed by such suit, then such auditor shall not institute such suit, but shall credit the same to the state on his books, and report the amount of such account to the board of supervisors of his county, and the said board shall draw from the county fund the amount claimed, and cause the same to be paid into the state treasury. All accounts for clothing and transportation of pupils on the books of the superintendent of this institution, and not paid at the time of the enactment of this section, hereby are made subject to the same, and shall be collected accordingly.

Return of inmates.

SEC. 11. Any inmate of the institution may be returned to the parents or guardian, whenever the trustees may so direct.

"Feeble-minded" include idiots.

SEC. 12. The term "feeble-minded," as used in connection with this institution, shall be so construed as to include idiotic children, and the institution shall provide a custodial department for the care of such children as cannot be benefited by educational training.

Report of board.

SEC. 13. The board of trustees shall make a full report of the disbursements of the institution, and its condition, financial and otherwise, to the general assembly, at each regular session thereof.

[As to general provisions, regulating reports of boards of trustees of state institutions, see 19 G. A., ch. 175, § 1, in supplement to page 28.]

Appointment of officers, teachers, etc.

SEC. 14. The superintendent may, under the direction of the board of trustees, appoint such subordinate officers, teachers, attendants and other help as may be needed for the efficient working of the institution.

SEC. 1643.

[Twentieth General Assembly, Chapter 153.]

Name or reform schools changed to industrial schools.

SECTION 1. The reform schools of this state shall be hereafter known as industrial schools instead of reform schools and the trustees of said schools shall be known as the board of trustees of the industrial schools.

GIRLS' DEPARTMENT OF STATE REFORM SCHOOL.

[Eighteenth General Assembly, Chapter 171.]

SECTION 1. The executive council is hereby authorized and instructed to purchase for the use and occupancy of the girls' department of the reform school the building, furniture, and grounds of the Mitchell Seminary, located at Mitchellville, Iowa, and twenty acres of land adjoining said grounds on the south, comprising forty acres in all, and in payment therefor the auditor of state is hereby required to draw warrants on the state treasurer for the amount of the purchase money, and the warrants so drawn shall be payable, one half in the year 1882, and the other half in the year 1884: *Provided*, that the cost of the said property shall not exceed the sum of twenty thousand dollars, and *further Provided*, That no money shall be paid for said property until a title thereof is furnished to the state free of all liens and incumbrances.

SEC. 2. It shall be the duty of the trustees of the reform school to take possession of said property after the completion of the purchase, and cause the building to be painted and repaired, and erect suitable stables, and out-buildings on the said grounds, at an expense not exceeding the sum of one thousand dollars; and they shall hereafter as soon as practicable remove to said premises the girls' department of the reform school which is now temporarily located at Mt. Pleasant, Iowa.

[Sec. 3 makes a temporary appropriation. In preparing the original edition of this work the whole act was omitted as not containing any general provisions, but it is the only act which relates to the establishment of the girls' department at Mitchellville and is therefore here inserted.]

479.

SECS. 1659, 1660 and 1661.

[19 G. A., ch. 150, amends these sections by striking out the word "majority" wherever it occurs therein and inserting in lieu thereof the words, "twenty-one years."]

480.

SUPPORT OF GIRLS IN STATE REFORM SCHOOL.

[Nineteenth General Assembly, Chapter 92.]

SECTION 1. There is hereby appropriated, out of any money in Appropriation, the state treasury not otherwise appropriated, the sum of ten dollars per month, or so much thereof as may be necessary, for each girl actually supported in the state reform school, counting the average number sustained in the school for the month, and upon the presentation to the auditor of state, each month, of a sworn statement of the superintendent of the average number of girls supported by the school for the preceding month, the auditor of state shall draw his warrant on the treasurer of state in favor of the treasurer of the board of trustees of the state reform school for the sum hereinbefore provided.

SEC. 2. The provisions of section 1 of this act shall apply from and after October 1, 1881.

481.

SEC. 1675.

[19 G. A., ch. 166, § 1, amends this section by striking out the words "eight thousand" in the fourth line and inserting in lieu thereof the words "ten thousand."]

SEC. 1676.

[19 G. A., ch. 166, § 2, repeals this section as amended and enacts the following as a substitute therefor:]

SEC. 1676. For the purpose of meeting current expenses there is appropriated out of the state treasury so much as is necessary, not to exceed forty dollars per quarter for each pupil in said institution except non-residents at the time of their reception.

SEC. 3. All acts and parts of acts inconsistent with this act are hereby repealed.

SEC. 1677.

[19 G. A., ch. 175, § 1, provides that all boards of trustees of state institutions shall make biennial reports to the governor on or before the fifteenth day of August preceding the regular session of the general assembly: See that act in supplement to page 28.]

483.

SEC. 1692.

[19 G. A., ch. 105, amends 18 G. A., ch. 203, so as to insert in this section the word "thirty-five" in place of the word "twenty-eight," with the proviso that such change shall "commence and have effect from the quarter commencing January 1, 1882."]

SEC. 1693.

[The word "eleven" before "thousand" in the fourth line is made "twenty-one" by 20 G. A., ch. 73. The amount had been previously changed by 18 G. A., ch. 203, and 19 G. A., ch. 105.]

SEC. 1694.

[19 G. A., ch. 175, § 1, provides that boards of trustees of state institutions shall make biennial reports to the governor on or before the 15th day of August preceding the regular sessions of the general assembly: See that act in supplement to page 28.]

486.

16 G. A., Ch. 129, § 9.

[19 G. A., ch. 175, § 1, provides that the reports of boards of trustees of state institutions shall be made biennially to the governor on or before the 15th day of August preceding the regular sessions of the general assembly: See that act in supplement to page 28.]

489.

SEC. 1713.

The school district being a public corporation or *quasi* corporation, is not liable for personal injuries sustained on account of the negligent construction of its school houses, or negligence in failing to keep them in repair: *Lane v. District Township of Woodbury*, 58-462.

490.

SEC. 1715.

A court of equity may, in a proper case, set aside an award by arbitrators chosen under this section. Appeal to the county superintendent, under § 1829, is not the proper remedy: *Dist. T'p of Algona v. Dist. T'p of Lot's Creek*, 54-286.

The arbitration here contemplated is the arbitration provided for by the statute (see Code §§ 3416-3431), and a court cannot enter up judgment for a different amount than that taxed in the award: *Dist. T'p. of Little Sioux*

v. Ind. Dist. of Little Sioux, 60-141.

Where a portion of an independent district is severed and restored to a district township, to which it geographically belongs, it seems that bonds issued by the independent district must be taken into account in apportioning the liabilities between it and the district township, although the district township cannot issue such bonds: *Albin v. Board of Directors of Ind. Dist. of West Branch*, 58-77.

SEC. 1717.

[19 G. A., ch. 51, §1, amends subdivision 2 of this section by adding thereto the following: "And to authorize the board of directors to obtain, at the expense of the district township, such highways as such board may deem necessary for proper access to the school-houses in their district." And § 2 of the same act amends subdivision 3 by adding thereto the following: "And for obtaining highways for access to school-houses."]

The electors of a district township have no power under this section, or otherwise, to authorize the discharge

of a debtor of the district without consideration: *District Township of Washington v. Thomas*, 59-50.

493.

SEC. 1723.

The board of directors has no authority to bind the district township for insurance of building, furniture, &c.: *Am. Ins. Co. v. Dist. T'p. of Willow*, 55-608.

A board of directors has no author-

ity to employ one of its number for a compensation to oversee the completion of a school-house abandoned by the contractor: *More v. Ind. Dist. of Toledo City*, 55-654.

BARB WIRE FENCE AROUND SCHOOL GROUNDS.

[Twentieth General Assembly, Chapter 103.]

SECTION 1. It is hereby made the duty of the board of directors of every independent district and of every district township to remove before the first day of September, A. D. 1884, any barb wire fence enclosing in whole or part any public school grounds in such district and it is also made the duty of any person owning or controlling any barbed wire fence within ten feet of any public school grounds to remove the same within the time herein above named.

SEC. 2. Hereafter barb wire shall not be used in enclosing in whole or in part any public school building or the grounds upon which the same may stand; and no barbed wire shall be used for a fence or other purpose within ten feet of any public school ground.

SEC. 3. For a failure or neglect on the part of any board of directors of any independent district or of any district township to carry out the provisions of this act any member of such board shall be fined on conviction not exceeding twenty-five dollars, any person violating the provisions of this act shall on conviction thereof be fined not exceeding twenty-five dollars.

494.

SEC. 1726.

As to what rules it is competent | see notes to § 1735.
for the board to make and enforce,

INSURANCE OF SCHOOL PROPERTY.

[Nineteenth General Assembly, Chapter 149.]

SECTION 1. The board of directors of any independent school district organized under any of the laws of this state may use unappropriated contingent funds for the purpose of effecting an insurance on the school property of their district, but they may contract no debts for this purpose.

SETTING OUT SHADE TREES.

[Nineteenth General Assembly, Chapter 23.]

SECTION 1. The board of directors of each district township and independent district shall cause to be set out, and properly protected, twelve or more shade trees on each school-house site, belonging to the district, where such number of trees are not now growing, and such expense shall be paid from the contingent fund.

SEC. 2. It shall be the duty of the county superintendent, in visiting the several schools in his county, to call the attention of any board of directors neglecting to comply with the requirements of this statute, and the required number of shade trees shall be planted as soon thereafter as the season will admit.

[Section 3 amends § 1745, which see, in supplement to page 498.]

495.

SEC. 1734.

A teacher, who is aggrieved by being discharged by the board without being permitted to be present or make defense, should appeal, under § 1829, to the county superintendent. He cannot treat the action of the board as void: *Kirkpatrick v. Ind. Sch. Dist. of Liberty*, 53-585.

SEC. 1735

A rule providing for expulsion of a pupil for failure to pay for damages done by him to school property, when his default is no breach of good order or good morals, is beyond the authority of school officers to promulgate or enforce: *Perkins v. Board of Directors, &c., of West Des Moines*, 56-476.

496.

SEC. 1739.

[19 G. A., ch. 46, repeals this section, and re-enacts it with the insertion of the words "of independent districts" after the word "directors," in the second line, and with the addition at the end of the section of the following words: "and shall be empowered to administer the oath of office to the secretary, treasurer, and members of the board."]

498.

SEC. 1745.

[19 G. A., ch. 23, § 3, amends this section by adding to it the following:]
12. The number of trees set out and in thrifty condition on each school-house grounds.

[The other sections of the same act are inserted following § 1729, in supplement to page 494.]

SEC. 1747.

The treasurer of a district township has no authority to bind the township by his contracts or admissions: *Carpenter v. Dist. Twp. of Union*, 58-335.

SEC. 1748.

The payment of money out of the contingent fund to secure a highway to a school-house is not unlawful: *Ind. Dist. of Flint River v. Kelley*, 55-568.

499

SEC. 1753.

It is the duty of the president to determine whether the contract of the sub-director conforms to the provisions of law, and give or withhold his approval accordingly. If he withhold approval, though erroneously, the contract is incomplete. An action, however, may be maintained on the contract if it has been performed without objection on the part of the district, or part payment has been made thereunder for services rendered, or there have been other acts upon the part of the district evincing an intention to ratify the contract and waive its formal approval. But where the services were rendered after notification by the president that he would not approve the contract, and there is no proof that the services were accepted or the contract ratified, the mere rendering of the services will not entitle plaintiff to recover: *Place v. Dist. T'p of Colfax*, 56-373.

501.

SEC. 1767.

[19 G. A., ch. 167, providing for a board of examiners to examine teachers for state certificates and diplomas, is inserted in supplement to page 460.]

503.

SEC. 1774.

[19 G. A., ch. 161, § 2, amends this section by striking out all the words after "directed," in the seventh line, and inserting in lieu thereof the following: "*he may, at his discretion, visit the different schools in his county, and shall, at the request of a majority of the directors of a district, visit the school in said district at least once during each term.*"]

SEC. 1776.

[19 G. A., ch. 161, § 1, amends this section by striking out the word "three" in the second line, and inserting in lieu thereof the word "four."]

508.

SEC. 1796.

This section, as to change of boundaries of sub-districts, does not apply to independent districts, the boundaries of which can be changed, if at all, only in pursuance of §§ 1797 and 1806: *Eason v. Douglass*, 55-390.

Where a restoration of territory is agreed to, and no time fixed therefor,

it will be considered as taking place the first of March following; and taxes collected prior to that time should be paid to the township to which the territory had previously been attached: *District Township of Honey Creek v. Floete*, 59-109.

SEC. 1797.

There is now no provision exempting sub-districts from the requirement that they shall be co-terminous with the district township, except that made by this section: *Large v. Dist. Tp. of Washington*, 53-663.

To warrant the action of the county superintendent in attaching a portion of a district township to another township, the consent of the directors of the township from which the territory is detached, and the existence of natural obstacles, must both appear. Otherwise such action is unauthorized and void. Such action may, however, be legalized by a curative act. But the district township

cannot be deprived, by such curative act, of taxes already levied on the territory at the time the transfer was made: *Ind. Dist. of Union v. Ind. Dist. of Cedar Rapids*, 17 N. W. Rep., 895.

Whether a portion of one district township, which is annexed to another district township for school purposes, is properly so annexed or not, taxes levied and collected upon the certificate of the township to which the territory is attached should be paid to such township, and not to the township to which the territory properly belongs: *District Township of Honey Creek v. Floete*, 59-109.

509.

SEC. 1798.

[19 G. A., ch. 160, amends this substitute (18 G. A., ch. 111) by adding thereto the following:]

Provided, however, that no such restoration shall be made unless there are fifteen or more pupils between the ages of five and twenty-one years actually residing upon said territory sought to be restored and not until there has been a suitable school-house erected and completed within the limits of said territory suitable for school purposes.

Restoration not
to be made un-
less there are
15 pupils and a
school house.

The primary object of the amendment of this section seems to have been to place independent districts on the same footing as district townships and sub-districts therein. Upon the change of territory from an independent district to a district township, there must be an apportionment of all assets and liabilities, as provided in § 1715, although a part of such liabilities consists of

bonds issued by the independent districts which the district township would have no authority to issue. This section applies as well to territory incorporated into an independent district at the time of its organization, as to such as is subsequently attached thereto: *Albin v. Board of Directors of Ind. Dist. of West Branch*, 58-77.

AFTER SEC. 1800.

BOUNDARIES OF INDEPENDENT DISTRICTS.

[Nineteenth General Assembly, Chapter 118.]

SECTION 1. All the territory of an incorporated city or town, whether included within the original incorporation or afterward attached thereto in accordance with the provisions of law, shall be or become a part of the independent district or districts of said city or town.

SEC. 2. When boundaries are changed by the taking effect of this act, the respective boards of directors shall make an equitable settlement of the then existing assets and liabilities of their districts, as provided for by section 1715 of the code.

510.

SEC. 1802.

[By 20 G. A., ch. 103, boards of directors of independent districts, as well as district townships, are directed to remove any barb wire fence enclosing public school grounds, and the use of such wire in fencing school grounds is prohibited: See that act in supplement to page 493.]

521.

SEC. 1829.

A teacher, claiming that he is wrongfully discharged by the board for incompetency without being heard, should appeal, as here provided. He cannot, without doing so, maintain an action for his salary on the ground that such dismissal is void: *Kirkpatrick v. Ind. Sch. Dist. of Liberty*, 53-585.

Cases wherein the jurisdiction and power of directors are brought in question, and wherein questions arise

involving the construction of statutes conferring power upon school officers, may properly be brought in the courts, as by mandamus for instance, without prosecuting the appeal here provided. So held, as to power of directors to make certain rules, under which plaintiff was excluded from school: *Perkins v. Board of Directors, &c., of West Des Moines*, 56-476.

525.

SEC. 1850.

This section applies to land purchased upon judgments recovered upon mortgages or contracts referred to in § 1874, being such mortgages or contracts as county authorities are authorized to make under the chapter of the Code relating to the school fund. In a case where the school

fund was not loaned by the county authorities under the provisions of the general statute, but was loaned by the state under the provisions of a special statute, held, that the county had no authority in the matter: *Carter v. Sherman*, 16 N. W. Rep., 707.

528.

SEC. 1862.

[19 G. A., ch. 174, § 2, amends this section by striking out, in the fourth line, the words, "*together with two good sureties.*"]

529.

SEC. 1865.

[Repealed by 19 G. A., ch. 174, § 1.]

531.

SEC. 1873.

The change in this section made by 18 G. A., ch. 12, § 5, pertains to the mere question of costs, and therefore, as applicable to mortgages executed prior to its passage, is not unconstitutional as impairing the obligation of contracts: *County of Kosuth v. Wallace*, 60-508.

535.

SEC. 1897.

[19 G. A., ch. 175, § 1, provides that the librarian shall make biennial reports to the governor, on or before the 15th day of August preceding the regular session of the general assembly: See that act in supplement to page 28.]

536.

SEC. 1899.

[19 G. A., ch. 13, amends this section as it here stands by inserting after the word "dollars," in the sixth line, the words, "*annually from and after the first day of January, 1882.*" 19 G. A., ch. 113, amends 18 G. A., ch. 194, so as to insert in place of the word "two," in the second line of this section, the word "*three.*"]

[20 G. A., ch. 191, § 3, repeals the provision in this section [as amended] appropriating \$500 per annum for an assistant librarian. Sec. 4 of same act changes the salary of the librarian. See that section, inserted in supplement to page 944. The other sections of the act make temporary provision for assistants and purchase of books.]

537.

SEC. 1906.

[19 G. A., ch. 175, § 1, provides that the board shall make biennial reports to the governor on or before the 15th day of August preceding the regular sessions of the general assembly: See that act in supplement to page 28.]

541.

SEC. 1920.

A lease for 999 years *held not in-* | *v. D. M., I. & M. R. Co.*, 58-205.
valid under this section: *Todhunter* |

542.

SEC. 1923.

An instrument assigning a judgment need not be recorded to be valid as to third parties. The *chose in action* so assigned can not be regarded as in the possession of the assignor at the time of the transfer,

or as retained in his possession afterward: *Howe v. Jones*, 60-70.

Possession retained by vendor or mortgagor after recording the instrument, as authorized by this section and § 1925, is strictly lawful and

not fraudulent or a badge of fraud, unless such retention is a part of the consideration of the sale: *Jordan v. Lendrum*, 55-478.

A creditor who does not secure a levy under attachment or execution before notice of an unrecorded sale or mortgage, is not protected: (following *Cragin v. Carmichael*, 2 Dill., 519; *Allen v. McCalla*, 25-464) *Crooks v. Stuart* (U. S. C. C. for Iowa), 7 Fed. Rep., 800.

Where the property at the time of the sale is in the actual possession of a third person as lessee or the like, a sale without notice and without change of possession is valid, and it is wholly immaterial in such cases whether or not the owner has the right to the immediate possession: *Campbell v. Hamilton*, 19 N. W. Rep., 220.

This section has no application to an assignment of a judgment: *Howe v. Jones*, 57-130.

The mortgage must be filed in the county where the mortgagor resides. It is not sufficient that it is filed in the county where the property is situated: *Stewart v. Smith*, 60-275.

Where the mortgaged property is in the possession of an agent of the mortgagee, an officer levying an attachment thereon is bound to take notice of the possession of such mortgagee, although the mortgage is not properly filed for record: *Ibid.*

To bind an officer levying an attachment with notice of an existing unrecorded mortgage thereon, it is

not necessary that such notice be received by him subsequent to the writ being placed in his hands: *Ibid.*

An attaching creditor who makes a levy without notice of an unrecorded mortgage, is protected against such mortgage, although he receives notice thereof before the sale under his levy. (Overruling *Kessey v. McHenry*, 54-187); *Bacon v. Thompson*, 60-284.

Where the description of the property covered by the mortgage was "all the cut and growing and having grown on the" premises described, held, that the description was too uncertain to be of any validity against an officer who had levied upon the property, and that the court would not insert or understand the word "crops" for the purpose of curing the defect: *Clay v. Currier*, 17 N.W. Rep., 760.

The description of the mortgaged property as "one oscillation thresher, size 6, 30 inch cylinder, and also one Chicago Pitts ten horse power," held, insufficient: *Hayes v. Wilson*, 17 N. W. Rep., 110.

The fact that a chattel mortgage is given after the mortgagor becomes insolvent, and contains an agreement that he may remain in possession of the property, and sell it in the ordinary course of trade, and apply the proceeds to his own use, does not render the mortgage fraudulent: *Sperry v. Ethridge*, 19 N. W. Rep., 657.

544.

SEC. 1927.

The equity of redemption of the mortgagor of personal property after conditions broken, is subject to sale or transfer as other property, and passes under a general assignment. After such general assignment the assignee is not subject to garnishment in a suit against the mortgagor: *Gimble v. Ferguson*, 58-414. So, also, where, by agreement between mortgagor, mortgagee and an attaching creditor, it was agreed that the mortgaged property be sold in bulk and the proceeds, after satisfying the mortgage, be applied upon the attachment, held, that this agree-

ment transferred the mortgagor's equity of redemption and took priority over a subsequent attachment of such proceeds by another creditor: *Phelps v. Winters*, 59-561.

If mortgagee has the right to take possession, he may do so even after levy, and leave no interest in the mortgagor subject to levy: *Wells v. Chapman*, 59-658.

The mortgagor of exempt personal property may maintain an action for damage where the same has been wrongfully seized and sold upon execution: *Evans v. St. Paul Harvester Works*, 18 N.W. Rep., 881.

545.

SEC. 1931.

A mortgage will attach to an after | acquired title: *Rice v. Kelso*, 57-115.

SEC. 1932.

A grant of an estate to commence in *futuro* would give the grantee a present interest in the property; therefore, held, that an instrument purporting to convey premises in the usual form of a deed, but containing the stipu-

lation that the grantee "shall have no interest in the said premises as long as the said grantor shall live" did not transfer any estate to the grantee: *Leaver v. Gauss*, 17 N. W. Rep., 522.

SEC. 1934.

Though the conveyance to the trustee is absolute in form, a purchaser from the trustee, with knowledge of the trust, takes subject there-

to: *Sleeper v. Iselin*, 17 N.W. Rep., 922.

Section applied: *McHenry v. Painter*, 58-365.

546.

SEC. 1937.

This section applies where the person purporting to convey the title has no title, as well as where he is in fact the owner, but his title is subject to incumbrances, in violation of his covenants. In either case the wife joining is not estopped from relying upon an outstanding title or incumbrance inconsistent with the conveyance in which she joins:

Thompson v. Merrill, 58-419.

The fact that the land conveyed is not owned by the husband does not render the wife liable to any greater extent under the covenants of the deed than if it had been owned by him, in case the title is not in her, and such covenants will not work an estoppel as to her: *Thompson v. Merrill*, 58-419.

SEC. 1940.

The taking of a mortgage on the same property is a merger or waiver of the vendor's lien: *Stuart v. Harrison*, 52-511; *Escher v. Simmons*, 54-269.

A contract by the vendee to convey, will not operate to defeat the

vendor's lien: *Noyes v. Kramer*, 54-22.

This section is unconstitutional, so far as it applies to liens existing before its enactment: *Webster v. McCullough*, 61-496.

547.

SEC. 1941.

A deed which does not purport to convey the property, but quit-claims the grantor's right, title, interest and estate therein, is a quit-claim deed, and the grantee therein can not be regarded as a purchaser without notice of equities affecting grantor's title; *Wightman v. Spofford*, 56-145.

A subsequent purchaser by warranty deed from one holding by quit-claim, is protected as a *bona fide* purchaser: *Winkler v. Miller*, 54-476.

A purchaser at a sheriff's sale without notice is protected against latent equities, but a mere creditor is not: *Jones v. Brandt*, 59-332.

The fact that a party having a deed to property on record, stands by and lets it be sold as the property of another, without taking steps by injunction to restrain such sale, is not es-

topped from setting up his title as against the purchaser at such sale: *Ibid.*

Where a mortgage is given to secure a pre-existing indebtedness and not in consideration of any extension of time, the mortgagee, even without notice of a prior unrecorded mortgage, does not acquire any rights superior thereto: *Phelps v. Fockler*, 61-340.

Where an assignment of a mortgage is not recorded and a subsequent purchaser of the premises releases a mortgage he holds upon other land in consideration of the release by the mortgagee of the mortgage which has been assigned, such release will extinguish the mortgage as to the property and it cannot be foreclosed by the assignee: *Dowes v. Craig*, 17 N. W. Rep., 778.

549.

SEC. 1944.

Where a mortgage, after being filed with the recorder, and indexed, was withdrawn, and not recorded for two years, *held*, that the indexing alone did not impart constructive notice to persons acquiring liens without other notice thereof. The index alone only amounts to constructive notice, for the time intermediate the indexing and recording in the usual manner, and while the instrument remains on file with the recorder: *Yerger v. Barz*, 56-77.

If a party is not charged with constructive notice by what appears in the index book, he is not bound to

look further, and is not bound by what appears of record: *Thomas v. Desney*, 57-58.

"Helen" and "Ellen" are not the same christian name, and an index entry in name of one does not impart notice as to lien against the other: *Ibid.*

Where the index erroneously describes the property, a subsequent purchaser will not be affected with notice, even though the examination of the record of the instrument would have disclosed facts which might have put him upon inquiry: *Peters v. How*, 18 N. W. Rep., 296.

553.

SEC. 1958.

Whilst a notary continues in office, it is competent for him to amend his certificate of acknowledgment to supply a defect, by making a new one, provided it is in accordance with the real facts: *C., B. & Q. R. Co. v. Lewis*, 53-101.

The certificate of the officer, and his testimony as to the acknowledgment, are entitled to great weight. The presumption is very strong in his favor: *Bailey v. Landingham*, 53-722.

555.

SEC. 1964.

In an action against a notary for damages under this section, it must be alleged that he knowingly mis-

stated a material fact: *Scotten v. Fegan*, 17 N. W. Rep., 491..

SEC. 1966.

[20 G. A., ch., 203, § 1, is a re-enactment of the provisions of this section, substituting, however, "shall" for "may" in the tenth line, inserting "legally" before "recorded" in the eleventh line, and omitting "thereof" in the twelfth line. The remainder of the act is as follows:]

Applies to
deed's, mort-
gages and con-
veyances.

SEC. 2. This act shall apply to all deeds, mortgages and conveyances made, filed, recorded and proved as contemplated in section one of this act prior to the first day of January, 1884.

These provisions legalizing defective acknowledgments do not apply to tax deeds. The acknowledgment in such cases is by the statute essential to the validity of the instrument, and a defect therein is not cured by such statute: *Goodykuntz v. Olsen*, 54-174.

SEC. 1967.

Following *Brinton v. Seeters*, 12- | 389; *Ferguson v. Williams*, 53-717.

560.

SEC. 1988.

[20 G. A., ch. 23, § 2, exempts the homestead of a pensioner, whether the head of a family or not, paid for with pension money or the proceeds or accumulations thereof: See that act in supplement to page 816.]

An unmarried woman who had accepted, protected and was providing for children of a deceased sister, held, to be entitled to the homestead exemption: *Arnold v. Waltz*, 53-706.

As to who is "head of a family" under the provisions for exemption of personal property, see notes to § 3072.

Where a portion of the homestead is by proper proceeding condemned for right of way, the damages allowed are exempt from execution. Whether the proceeds of a voluntary conveyance by the husband of a portion of the homestead for right of way would be exempt, *quære*: *Kaiser v. Seaton*, 17 N. W. Rep., 664.

561.

SEC. 1990.

If the wife actually signs an instrument of conveyance or incumbrance, she will not be allowed to dispute its validity on the ground that she was ignorant of its contents or that she was induced to do so by fraud or deception of her husband, in the absence of a showing that the grantee or mortgagee was cognizant of such deception and fraud: *Edgell v. Hagens*, 53-223; *Van Sickles v. Town*, 53-259.

An instrument in which the wife only joins for the purpose of releasing her dower, is not such a joint instrument as is required to convey or encumber the homestead: *Wilson v. Christopherson*, 53-481.

A conveyance of the homestead property from the husband to the wife will not vest in her such title that she alone can make a valid conveyance thereof: *Spoon v. Van Fossen*, 53-494.

An oral agreement by the parties to execute a mortgage upon the homestead, for money borrowed to redeem the same from execution, can not be specifically enforced, nor can the money so advanced be made a lien upon the premises by judicial decree: *Clay v. Richardson*, 59-483.

The verbal assent of the wife will not bind her to a conveyance of the homestead: *Donner v. Rodenbaugh*, 61-269.

Where the husband enters into

a contract to convey, to which both parties expect to secure the assent of the wife, but such assent is not secured, the husband is not liable in damages for failure to convey, to the same extent as in case of fraud. It is doubtful whether the measure of damage in such case against the husband would be more than the purchase money paid and interest. At any rate, he would not be liable to the extent of the difference between the contract price and such greater sum as the property might be worth at the time the contract should have been performed: *Ibid.*

Where the concurrence of the wife in a mortgage of the homestead is procured by duress, it can not be enforced: *First National Bank of Nevada v. Bryon*, 17 N. W. Rep., 165.

Where husband and wife have a homestead right as to property greater in amount than can be claimed under the homestead law, the boundaries of the homestead not having been established, the husband cannot, by conveying a portion of the property by an instrument in which the wife does not join, limit the homestead right to another portion thereof. He cannot make a valid sale of any portion until the provisions of § 1998 have been complied with: *Goodrich v. Brown*, 18 N. W. Rep., 893.

562.

SEC. 1992.

[20 G. A., Ch. 28, § 2, exempts to a pensioner his homestead acquired with pension money, even as to debts contracted prior to the purchase thereof. See that act in supplement to page 816.]

The entry of land under the U. S. homestead laws, which is afterward occupied as a homestead, constitutes

the purchase of the homestead within the meaning of this section. The exemption dates from such entry and

not from the issuance of a patent: *Green v. Farrar*, 53-426.

The homestead being subject to the lien of a judgment for a debt contracted before its acquisition from the time such judgment is rendered, a purchaser after the lien attaches, takes subject thereto, and in case of sale of the property under such judg-

ment has no other right than that of making statutory redemption from the sale: *Kimball v. Wilson*, 59-638.

A conveyance of the homestead can not be set aside as a fraud upon creditors whose claims are not a lien against it: *Aultman v. Heiney*, 59-654.

563.

SEC. 1993.

Where possession of the property as a homestead was taken pending foreclosure proceedings, *held*, that the wife acquired no right which she could assert as against the mortgage, even to compel the plaintiff to first exhaust other property: *Kemerer v. Bourne*, 53-172.

This section applies only where the other property pledged still belongs to the mortgagor. If he has sold such other property he cannot require that it be proceeded against, in the hands of a third party, before the homestead is sold. Also, by a sale of a portion of homestead premises, the homestead right thereto is lost, and mortgagor cannot insist that such portion be first applied to the payment of the mortgage: *Dilger v. Palmer*, 60-117.

The lien of a mortgage of the homestead executed by the owner before marriage, is prior to any claim the wife may have by the subsequent marriage, but in a foreclosure suit the wife must be made a party in order that the judgment be binding upon

her and that a sale thereunder may cut off her dower rights: *Chase v. Abbott*, 20-154.

Where a mortgage is given covering the homestead and other land, and then a second mortgage is executed upon the same land so far as not included in the homestead, and the second mortgage is foreclosed and the land covered by it sold, the purchaser thereof can not insist that the homestead be first subjected to the payment of the first mortgage: *Equitable Life Ins. Co. v. Gleason*, 17 N. W. Rep., 524.

Where a homestead was sold under special execution and the surplus in the sheriff's hands was applied upon other executions against the defendant, and it was shown that such other executions were not upon judgments which could be enforced against the homestead, but such application of the surplus was made without objection on the part of plaintiff, *held*, that he could not recover such surplus in an action against the sheriff: *Brumbach v. Zollinger*, 59-384.

564.

SEC. 1994.

Upon sale of the portion of the homestead upon which the house is situated, without intention to build upon and occupy the residue as a homestead, the remaining portion loses its homestead character: *Windle v. Brandt*, 55-221.

Continuing to occupy the house as tenant at will, after the conveyance, will not continue the homestead right: *Ibid.*

Where the building was not intended for business purposes, but the lower story was occupied for such purposes by the owner, while the cellar and second story were used by him for purposes of a residence, *held*, that the entire building was exempt: *Wright v. Ditzler*, 54-620.

Where a wife, owning a homestead, left it, and removed with her husband to another state, for a temporary purpose, *held*, that the intention to return must have existed, and would be presumed to continue until a contrary intent was shown: *Bradshaw v. Hurst*, 57-745.

Where the house used as a home is situated upon lands of the wife, the homestead may also include land owned by the husband. It is entirely immaterial whether the legal title be in the husband or wife, or whether one of them holds the title to one tract and the other to another tract, where the two tracts are used as a homestead: *Lowell v. Shannon*, 60-713.

The case of *Rhodes v. McCormick*, 4-368, as to a homestead right in the upper story of a building, followed: *Mayfield v. Maasden*, 59-517.

Where it appeared that a party owning and occupying a farm as a homestead moved to town to practice law with the intention of pursuing his profession permanently if he was able to make a living by it, held, that the intention was such as to constitute an abandonment of the homestead: *Kimball v. Wilson*, 59-638.

Where the owner with his family removed permanently from the property, resided in different places, voted at elections where so residing, and had no definite intention of returning to the property, but intended to exchange it for another homestead when possible, held, that the facts showed an abandonment. Abandonment may be shown without proof

of the acquisition of a new homestead: *Cotton v. Hamil*, 53-594.

Facts held sufficient to show an abandonment: *Leonard v. Ingraham*, 58-406.

Where the wife, while absent from the homestead, requested a creditor of the husband to levy an attachment thereon, held, that she thereby abandoned her homestead right and could not insist upon it as against such attachment: *Parson v. Cooley*, 60-269.

The homestead exemption is for the benefit of the family. So long as the family desires to keep the homestead as such, and does actually keep it, it remains exempt, although the head of the family may have gone to another state, and acquired property and a residence there, with the intention of subsequently removing his family: *Savings Bank of Decorah v. Kennedy*, 58-454.

565.

SEC. 1997.

A stable kept for domestic use, in connection with the house, is appurtenant to the homestead, and ex-

empt without regard to value: *Wright v. Ditzler*, 54-620.

SEC. 1998.

Where a portion of defendant's farm, upon which he resided, was sold without plating a homestead, but the dwelling and more than enough land for a homestead were left, held, that the sale might be set aside as between the parties, but was not void: *Martin v. Knapp*, 57-336.

Even though a homestead right may exist in the undivided interest of a tenant in common, yet in case of an execution sale of such tenant's interest it is not proper for the officer to set off any specific portion as a homestead: *Farr v. Reilly*, 58-399.

White v. Rowley, 46-680, followed; *Lowell v. Shannon*, 60-713.

Failure of the officer to plat the homestead as here directed will render the sale void, whether it be on a general or special execution, and it is immaterial that the owners make no objection to a sale *en masse*: *Owens v. Hart*, 17 N. W. Rep., 898.

Where a tract of land including the owner's homestead was sold on special execution in a lump, after first having been offered in forties, held, that there was no prejudice to the owner resulting from failure of the sheriff to mark out and plat the homestead: *Brumbaugh v. Zollinger*, 59-384.

SEC. 2000.

The change of metes and bounds contemplated by this section has no reference to a conveyance or mortgage, and the change herein referred to cannot be effected in that way without the consent of the husband or wife, unless it is for the purpose of the acquisition of a new homestead: *Goodrich v. Brown*, 13 N. W. Rep., 309.

The purchase of a second homestead with the proceeds in part of the

first and other means entitles the owner to hold it exempt from debts contracted subsequent to the occupancy of the old homestead, where the value of the second homestead does not exceed that of the first: *Lay v. Templeton*, 59-684.

The proceeds of the homestead when invested in a new homestead in another State do not remain exempt. Therefore, where a party sold his homestead in Iowa and purchased

one in Missouri, and thereafter sold his homestead in Missouri and invested the proceeds in a homestead in Iowa, *held*, that he could not hold the last homestead in Iowa exempt from debts existing at the time of its purchase, even though they did not antedate the first homestead: *Rogers v. Raisor*, 60-365.

Where a debtor holding a homestead exempt from execution for his debts exchanged the same for other property which he procured to be conveyed directly to his wife, *held*, that

the property thus conveyed to the wife did not become subject to payment of his debts, and that such conveyance to the wife was not fraudulent: *Jones v. Brandt*, 59-332.

Where defendant relies upon the fact that his homestead was procured with the proceeds of a previous homestead in order to establish its exemption from a claim which antedates the last homestead, the burden of proof to establish that fact is upon him: *First National Bank of Davenport v. Baker*, 57-197.

566.

SEC. 2001.

The defendant claiming that his homestead, purchased since the contracting of a debt which it is sought to enforce against it, was purchased with the proceeds of a prior home-

stead, has the burden of proving such fact. Plaintiff makes a *prima facie* case by showing that his claim antedates the homestead: *First Nat. B'k of Davenport v. Baker*, 57-197.

SEC. 2005.

These provisions apply where the party claims more than forty acres

exempt as a homestead: *Green v. Furrar*, 53-426.

567.

SEC. 2007.

The survivor is entitled to occupy the homestead for a reasonable time in which to make an election whether to retain such possession for life, or take a distributive share of the property. During occupancy for such reasonable time the survivor should be allowed to receive the income and profits therefrom. So *held*, as to rent of coal mine on premises: *Cunningham v. Gamble*, 57-46.

As to right of survivor to recover damages for injuries to the property during occupancy, see *Cain v. C. & R. I. & P. R. Co.*, 54-255.

The right of the wife to occupy

the homestead after the death of the husband is not a right or interest in his estate which she takes by inheritance, but a mere personal right unaccompanied by a title or property interest therein; therefore, *held*, that the stipulation in an ante-nuptial contract by which the wife accepted the provision therein made in lieu of her rights of dower and inheritance, did not constitute a relinquishment of her right to occupy and possess the homestead during her life: *Mahaffy v. Mahaffy*, 18 N. W. Rep., 685.

SEC. 2008.

Where at the time of the death of the wife, owning the fee of the homestead, she and the husband were absent from the homestead, but without having as yet abandoned it, *held*, that there could not subsequently be an abandonment by the husband of his life interest, except by a setting off of a distributive share, and that upon his death the property descended to the heirs free from his debts: *Bradshaw v. Hurst*, 57-745.

The homestead is not liable in the hands of the survivor or heirs for funeral expenses and expenses of last sickness of deceased owner: *Knox v.*

Hanlon, 48-252.

Where the entire homestead exceeds in extent the dower interest of the wife, and she continues occupying it for ten years without making claim to have dower admeasured, she will be regarded as having elected to take the homestead for life in lieu of the distributive share: *Conn v. Conn*, 58-747.

The occupancy of the homestead under a devise of a life estate of land including the homestead, will not be considered as an election defeating the widow's right to dower: *Blair v. Wilson*, 57-177.

568.

SEC. 2014.

Where the person in possession does not recognize the owner as landlord, he can not be regarded as tenant at will: *Martin v. Knapp*, 57-336.

569.

SEC. 2015.

A tenant holding over after the termination of a tenancy, which by express terms of the lease was to end at a particular time, is entitled only to three days' notice to quit, as specified in § 3611: *Kellogg v. Grove*, 53-395.

Where property was bought in at an execution sale under such circum-

stances that there was no right of redemption, but the execution defendant was allowed to remain in possession during the year following the sale, and thereafter, held, that he became a tenant at will: *Dobbins v. Lusch*, 53-304; *Munson v. Plummer*, 59-120.

SEC. 2017.

A creditor of the tenant can not, by levy on a growing crop, acquire priority over the landlord's lien for rent: *Atkins v. Womeldorf*, 53-150.

Where a chattel mortgage was executed by the tenant during the term of the lease, and afterward, before the expiration of the term, a new lease was executed covering the remainder of the term and an additional period, held, that for rent accruing during the unexpired term of the old lease, the landlord's lien remained paramount to the chattel mortgage: *Rollins v. Proctor*, 56-326.

Where a grocer used horses and wagons in connection with his business, but did not keep them on the premises leased for a grocery, held, that the landlord owning such premises did not have a lien upon such horses and wagons: *Van Patten v. Leonard*, 55-520.

A lien exists upon crops raised by the tenant, and such crops may be followed by the landlord into the hands of the purchaser: *Holden v. Cox*, 60-447.

The lien of the landlord can be en-

forced against a purchaser from the tenant, of property which in the ordinary course of business of the tenant is kept for use and not for sale, such as the team of horses used in cultivating a farm: *Richardson v. Peterson*, 58-724.

Negotiation of a note which is given for rent does not prevent the landlord (payee), who is afterward compelled to take up the note as indorser, from enforcing his lien for the rent for which the note was given: *Farwell v. Grier*, 38-83; and see *German Bank v. Schloth*, 59-316, 323.

If the landlord proceeds under the general attachment law for rent not due, he will be confined to the remedy there given, and can not claim the benefit of his landlord's lien: *Clark v. Haynes*, 57-96.

A landlord can not claim a lien prior to that of a mortgage, where he did not, at the time of the execution of the mortgage, have a subsisting contract by virtue of which the rent claimed was to accrue: *Thorpe v. Fowler*, 57-541.

572.

SEC. 2031.

A highway can not be established by user alone, although the owner may have had knowledge of the use, if he did not have also express notice

that a claim was made based theron, independent of or additional to the mere use: *State v. Mitchell*, 58-567.

580.

SEC. 2077.

Under a contract not in writing to pay ten per cent. interest, the plaintiff may set up and recover upon a

contract to pay six per cent. interest: *Brockway v. Haller*, 57-368.

A contract providing for interest at

the rate of ten per cent. payable semi-annually, and that the semi-annual installments of interest shall draw interest at the rate of ten per cent. after they become due, is not usurious: *Hawley v. Howell*, 60-79.

When money is paid for the use of

another, imposing an obligation upon the party who received the benefit of the payment to reimburse the party paid, interest from the day of payment is recoverable: *Goodnow v. Litchfield*, 19 N. W. Rep., 226.

SEC. 2079.

Usurious interest paid on a note afterward put in judgment, cannot subsequently be applied as payments on other notes. In the absence of collusion, or intent to cover usury, a judgment is conclusive between parties and privies: *Phillips v. Gephart*, 53-396.

Usury once paid cannot be recovered back. If in separate transactions two notes are given, both usurious, and one is paid, the unlawful interest thus paid cannot be set up in an action on the note remaining unpaid: *Ibid.*

If, by consent of both parties to a usurious contract, the unlawful interest already paid is refunded, with the agreement that thereafter only lawful interest shall be charged, the contract is thereby purged of usury: *Phillips v. Columbus City Building Association*, 53-719.

Where deposits were made from time to time by a debtor with his creditor, such creditor being a bank which held his notes, and from time to time balances were struck and new notes given, usurious interest being

included in the computation, *held*, that the deposits must be regarded, in the absence of evidence of an agreement to the contrary, as having been applied *pro rata* upon interest and principal, notwithstanding the entry upon the books of the bank showing application of such payments to the extinguishment of interest: *Kinsler v. Farmers' National Bank of Centerville*, 58-728.

Where a party, in order to raise an additional loan of money, agreed that if the person who already held his note and mortgage for a certain sum would sell it and then take another loan under a mortgage for a similar amount, the bearer would repay to him whatever discount he was compelled to suffer in selling the first note and mortgage, *held*, that such transaction was not usurious: *Comstock v. Wilder*, 61-274.

Where a usurious indebtedness has been paid in full and discharged, notes subsequently given in partial revival of such indebtedness will not be usurious: *Hoopes v. Furgeson*, 57-39.

582.

SEC. 2080.

It is not competent for the parties to settle a suit in which usury appears, in such manner as to deprive the state of a judgment on account of the usury: *Reynolds v. Babcock*, 60-289.

The existence of usury in the note upon which a judgment by confession is rendered, does not alone authorize the conclusion that the parties caused

the judgment to be entered for the purpose of concealing it or to evade the statute against it: *Kendig v. Marble*, 58-529.

Usury cannot be shown as a defense in the foreclosure of a mortgage, when the debt itself is reduced to judgment: *Kendig v. Marble*, 58-529.

584.

SEC. 2082.

The doctrine of *Richards v. Daily*, 34-427, is not applicable under § 2546, as it now stands: See *Downing v. Gibson*, 53-517, cited in supplement to that section.

586.

SEC. 2086.

[20 G. A., ch. 183, § 1, amends this section by striking out the words "suit is commenced thereon" in the last line of said section and inserting in lieu thereof the words "*notice of the assignment thereof is given in writing to the maker of such instrument.*"]

As to defenses and counter-claims which may be set up by the maker of a negotiable instrument in an action by an assignee thereof acquiring the same after maturity, see § 2546.

The word *instrument* as used in this section does not apply to a rail-

way ticket issued to a particular person by name, and expressly made non-transferable; and another person attempting to ride upon such ticket would be guilty of fraud: *Way v. C., R. I. & P. R. Co.*, 19 N. W. Rep., 828.

SEC. 2087.

[20 G. A., ch. 183, § 2, amends this section by inserting after and as a part of said section the words "*before notice of such assignment is given in writing by the assignee to the debtor.*"]

While the debtor might, under the section as it originally stood, voluntarily pay the assignor and thus avoid liability to the assignee, he is not under obligation to do so, and the assignor cannot compel him to make such payment: *Bailey v. U. P. R. Co.*, 17 N. W. Rep., 567.

The account in a particular case held to be an open account under the provisions of this section, and the assignment thereof subject to counter-claims arising before suit commenced: *Wing v. Page*, 17 N. W. Rep., 181 (On rehearing).

589.

SEC. 2104.

In order to make a sufficient tender after action brought, the amount tendered should be sufficient to cover the sum admitted to be due and costs accrued at the time: *Martin v. Whisler*, 17 N. W. Rep., 593.

590.

SEC. 2105.

Where a contract for the delivery of butter provided that such delivery should be made within a specified time after demand, held, that a written offer in accordance with this sec-

tion was sufficient, although the party making the offer had not at the time any butter on hand with which to fill the offer: *Holt v. Brown*, 19 N. W. Rep., 235.

591.

SEC. 2109.

It is not sufficient for the creditor to direct the institution of a suit (as by sending a claim to a justice of the peace with orders to sue) but he

must see that such suit is actually commenced within the time fixed: *German-American Bank v. Denmire*, 58-137.

592.

SEC. 2113.

Although a written contract (under our statute) imports a consideration, it is competent to show a failure of consideration to defeat the contract,

the burden of proof being upon the defendant: *University of Des Moines v. Livingstone*, 57-307.

SEC. 2115.

To justify the court in finding that a mortgage may be taken in connection with some other instrument as constituting an assignment, it should appear that the mortgagor at the time he made the mortgage had an intention to make an assignment: *Perry v. Vezina*, 18 N. W. Rep., 657.

The fact that mortgages and an instrument purporting to be a general assignment, were all made on the same day, acknowledged before the same officer, and delivered to the recorder by the same person, *held*, not sufficient to show that the mortgages were a part of the assignment, it being proved by positive evidence that the mortgages were executed in the forenoon when the party did not contemplate making the assignment, and that the purpose to do so was conceived after noon when the parties to whom the mortgages were given had separated. To bring the case within the rule of *Van Patten v. Burns*, 52-518, it must be shown that all of the instruments were part of the same transaction: *Farwell v. Jones*, 19 N. W. Rep., 241.

A mortgage, though executed by an insolvent person and covering all his property, is not necessarily an assignment. Whether it is to be con-

strued as such or not depends upon the intent with which it is made. It is not to be considered an assignment where there is nothing to indicate that the mortgagor intended anything but the giving of security: *Kohn v. Clement*, 58-589.

Where a debtor conveyed a stock of merchandise to his wife, who thereupon and in consideration thereof executed a chattel mortgage upon the same to secure the payment of her husband's indebtedness, in which mortgage certain creditors were preferred to others, *held*, that the transaction was in the nature of a general assignment and therefore void: *Van Horn v. Smith*, 59-142.

An assignment for benefit of creditors made by one partner without the consent of his co-partner, who might be consulted and is capable of giving assent or dissent, is void and does not prevent attachment by a creditor although no proceedings are taken by the partner not consenting to set the assignment aside: *Loeb v. Pierpont*, 58-469.

An assignment is not rendered invalid by the fact that a reservation is therein made as to property exempt from execution: *Perry v. Vezina*, 18 N. W. Rep., 657.

593.

SEC. 2117.

The provision as to recording the assignment is intended for the protection of subsequent purchasers, and if the assignment is duly executed and acknowledged and the assignee consents to accept the trust before the

levy of an attachment, the failure to record it until thirty seconds after the writ of attachment comes into the sheriff's hands will not render it invalid: *American v. Frank*, 17 N. W. Rep., 484.

594.

AFTER SEC. 2122.

[Twentieth General Assembly, Chapter 124.]

Personal service a preferred claim.

SECTION 1. Upon making order for the distribution of the assets in the hands of the assignee of an insolvent, as provided in section 2122 of the code, the court shall order to be paid in full, as a preferred claim, the earnings of any creditor for his personal services rendered to the assignor at any time within ninety days next preceding the execution of the assignment.

Report to the court when unable to find creditor.

SEC. 2. If upon the making of the final dividend to the creditors of the estate of an insolvent by the assignee, he shall be unable, after proper efforts, to ascertain the place of residence of any creditor, or any person who is authorized to receive the div-

⁵ dividend due such creditor, he shall report the same to the court, with evidence showing diligent attempt to find the creditor, or person authorized to receive the dividend. Whereupon the court may, in its discretion, order the distribution of the unclaimed dividend among the other creditors.

595.

SEC. 2127.

The right of action for damages for the wrongful suing out of an attachment upon property subsequent to a general assignment thereof is in the assignee, and not in the person making the assignment: *Rumsey v.*

Robinson, 58-225.

The sale of real property by an assignee is a judicial sale, and cuts off contingent right of dower in the property: *Stidger v. Evans*, 19 N. W. Rep., 850.

596.

16 G. A., Ch. 14.

A tax levied upon personal property, at least if subsequent to the assignment, should be paid by the assignee, rather than allowed to become a lien upon real property as against a mortgagee: *Brooks v. Eighmey*, 53-276.

It is the duty of the assignee, to the extent of the property which comes into his hands, to devote the

same to the payment of taxes, subject possibly to the payment of expenses of executing the trust. No claim for taxes is required to be filed, nor need any demand be made. The assignee must, at his peril, inquire whether the property or fund in his hands is liable for assessments or levies of taxes: *Huiscamp v. Alberts*, 60-421.

16 G. A., Ch. 100, § 2.

A sub-contractor furnishing material is not barred of his lien by taking collateral security after such material is all furnished, although the building be not yet completed: *Bissell v. Lewis*, 56-231.

Where the person entitled to a lien

takes a negotiable note for the amount of his claim and negotiates it, but upon its dishonor is compelled, as indorser, to take it up, he may enforce his original right to a lien: *German Bank v. Schloth*, 59-316.

SEC. 3.

Breaking the sod is not such "improvement upon land" as to entitle the person performing such labor to a mechanic's lien: *Brown v. Wyman*, 56-452.

Proof of performance of labor upon a building is sufficient to entitle a party to a lien; he is not required to show a special agreement that the labor was to be performed about that building. An implied contract will support a lien: *Foerder v. Wesner*, 66-157.

Loring v. Small, 50-271, followed: *Whiting v. Story Co.*, 54-81.

A mechanic's lien will attach upon an equitable title, and will follow the title into whosoever hands it may pass, and a mere substitution of another contract for that under which the property is held, will not defeat

the lien, if the new contract was given as evidence of the same rights which were held under the old: *Clark v. Parker*, 58-509.

The lien having attached to the land will remain thereon after the improvements have been destroyed or removed: *Clark v. Parker*, 58-509.

The holder of a claim, which in his hands may constitute the foundation of a lien, or one bound by a contract to furnish labor or material, may do all things necessary to enforce the lien allowed by law; therefore, *held*, that where a firm made a contract to furnish, and did furnish materials, and a part of the members of the firm afterward transferred their interest in the partnership to others, one of such members had authority in the name of the original firm to

perfect the lien for the material so furnished, and the assignee of such firm might enforce the lien thus perfected: *German Bank v. Schloth*, 59-316.

An assignee for the benefit of creditors, may enforce a mechanic's lien existing in favor of the assignor: *Ibid.*

597.

SEC. 4.

Where defendants, lessees of a mill under verbal lease for five years, put in machinery and fixtures, and afterward gave a chattel mortgage thereon, held, that the plaintiffs who furnished such machinery, and filed their statement within proper time, had a mechanic's lien upon such ma-

chinery, and were prior to the claims of the chattel mortgagee. Although, as between lessor and lessee, such machinery and fixtures were chattel property, yet in connection with a leasehold interest they were subject to the lien: *Nordyke v. Hawkeye Woolen Mills Co.*, 53-521.

598.

SEC. 6.

A simple statement that a sum is due the person claiming a lien is not the "statement or account" required by statute to be filed. It should show the account whereon the demand is founded. The claim should show that the party is entitled to a lien, and the nature of the demand, and the time when it accrued should therefore appear: *Valentine v. Rawson*, 57-179.

Under corresponding provision of the Revision, held, that it was not required that the name of the owner of the property against which the lien was claimed, should be mentioned in the statement. Where the owner had died before the filing of the statement for a lien, held, that the statement was sufficient if made out against the estate, though the names of the heirs owning the property were not mentioned: *Welsh v. McGrath*, 59-519.

As to limitation of actions to enforce mechanic's liens, see § 2529. 2. The statute begins to run from the expiration of the thirty or ninety days here allowed for filing the statement for a lien, whether the statement be filed within that time or not: *Squier v. Parks*, 56-407; *Dimmick v. Hinckley*, 57-757.

The meaning of the proviso at the end of this section is that the subcontractor shall have sixty days from the last day of the calendar month within which the work was performed, within which to file his claim: *Sundval v. Ford*, 55-461.

But this distinction between railroad sub-contractors and others, as to the time for filing claims, does not exempt the former from the provisions of the next section as to time within which such sub-contractor must serve notice upon the owner of the filing of his claim: *Ibid.*

599.

SEC. 7.

Where the principal contract recognizes the fact that there are to be sub-contractors whom the owner may be required to pay, and he knows that certain persons, as sub-contractors, have furnished material, he will be liable to the sub-contractors if their claims are properly filed, and notice served within the thirty days, although he has previously paid the owner; *Winter v. Hudson*, 54-336.

The court liberally construing this

section so as to protect the owner who in good faith pays the contractor within the thirty days in accordance with the agreement between them, has held that such payment to the contractor made without knowledge of the claim of the sub-contractor will defeat the lien of the latter; but that if payment is made within the thirty days, with knowledge of the sub-contractor's claim, even though such knowledge be merely through verbal

notice, the lien of the sub-contractor is not defeated. The fact that the building was not completed within the time prescribed in the contract can not change the result in such cases: *Andrews v. Burdick*, 16 N. W. Rep., 275.

Where an owner seeks to escape liability to a sub-contractor of whose claim he has notice within the thirty days, on the grounds that before notice of such claim he had settled with such contractor in accordance with the terms of his contract, the test as to whether he is to be protected in having made such settlement with the contractor is determined by whether he could probably, in the exercise of reasonable diligence, have discovered that the sub-contractor was entitled to a lien; and where it appeared that the owner knew that the contractor had to buy material, although he did not know from whom he bought it, *held*, that if he might have ascertained that fact from inquiry he should have done so and would not be protected: *Gilchrist v. Anderson*, 59-274.

It appearing that the owner of property before making the last payment under a contract had knowledge that the contractor had procured the materials used from the plaintiff, *held*, that as such owner could, in the exercise of ordinary care, have ob-

tained knowledge of plaintiff's claim by inquiring whether the material had been paid for, the sub-contractor might have his lien for materials used: *Fay v. Orison*, 60-136.

If the owner has knowledge of subcontractors, or of facts sufficient to put him upon inquiry, he should withhold payment during the thirty days. After that, if no notice be served upon him, he may, of course, proceed, whatever his knowledge may be, for he would be justified in assuming that the right to a lien was waived: *Jones, etc., Co. v. Murphy*, 19 N. W. Rep., 898.

While it may be that the mere stipulation on the part of the contractor not to claim a mechanic's lien would not preclude sub-contractors from doing so, they are precluded where the contractor stipulates in the outset for a mode of payment inconsistent with the mechanic's lien: *Ibid.*

If the principal contractor by the terms of his contract is entitled to compensation in full before the work is completed, and this compensation is fully paid to him before that time, and without any notice of claims for liens, no liens can be enforced against the property owner or the property: *Roland v. C. M. & A. R. Co.*, 61-380.

600.

SEC. 9.

If the premises do not sell for more than enough to pay for the prior mortgage or other lien, the accounting or distribution of proceeds of sale is not required. The entire proceeds are to be applied in such cases to the prior mortgage or other lien: *German Bank v. Schloth*, 59-316.

The provision of paragraph four

of this section has no application where the mortgage has been foreclosed and the premises sold thereunder before the materials for which the lien is claimed have been furnished; in such case the statutory right to redeem is the only right which can be enforced: *Shepherdson v. Johnson*, 60-239.

602.

SEC. 13.

Under 15 G. A., ch. 44, *held*, that an assignment of an installment due a mechanic, before completion of his contract, would not entitle assignee to a lien: *Merchant v. Ottumwa Water Power Co.*, 54-451; and under the present section, *held*, that it was the lien which was assignable, and followed the assignment of the debt, and not the mere right to a lien which the mechanic has not yet availed himself of under the statute: *Brown v. Smith*, 55-31; *Langan v.*

Sankey, 55-52.

Where an attempt to commence action within the thirty days was made, but the notice served was void because not stating the term at which defendant was required to appear, *held*, that another notice served after the expiration of the thirty days, to which defendant appeared, would not constitute a compliance with this section, and a lien could not be established in such action: *Jones, etc., Co. v. Boggs*, 19 N. W. Rep., 678.

SEC. 14.

Under the provisions of Rev. § 1852, similar to this section, *held*, that the requirement that the clerk's abstract shall contain the name of the person against whose property the lien was filed really amounts to no more than that it shall contain the name of the person against whom the account was filed and the claim for lien was made and that it did not require, by inference, the claim should state the

name of the owner of the property against which the lien was claimed. Therefore, *held*, that where the person against whom the claim existed was dead, the claim for a lien was properly filed as against the administrator of his estate, without naming the heirs, who were owners of the property against which it was sought to establish the lien: *Welch v. McGraff*, 59-519.

603.

LIENS OF SUB-CONTRACTORS ON PUBLIC BUILDINGS OR BRIDGES.

[Twentieth General Assembly, Chapter 179.]

SECTION 1. Every mechanic, laborer or other person who as Who may have sub-contractor shall perform labor upon, or furnish materials for a lien. the construction of any public building or bridge or other improvement not belonging to the state, shall have a valid claim against the public corporation constructing such building, bridge or other improvement for the value of such services and material, in an amount not in excess of the contract price to be paid for the building, bridge or other improvement, nor shall any such corporation be required to pay any such claim, at any time before, or in any manner different from that provided in the principal contract.

SEC. 2. Such claim shall be made by filing with the public How lien shall be made. officer through whose order the payment is to be made, an itemized and sworn statement of the demand within thirty days after the performance of the last labor, or the furnishing of the last portion of the material, and claims shall have priority in the order in which they shall be filed.

SEC. 3. Any party in interest may cause the adjudication as How adjudicated. to the amount, validity, priority and mode and time of payment of such claim by equitable proceedings in any court having jurisdiction. In such case the court may assess a reasonable sum to be taxed as attorney's fees against the party failing in such action in favor of such corporation.

SEC. 4. The contractor may at any time release such claim by filing with the treasurer of such corporation a bond, to such corporation, for the benefit of such claimants in sufficient penalty with sureties to be approved by such treasurer, conditioned for the payment of any sum which may be found due such claimant.

Contractor may release claim by filing bond. May prevent filing claim, by filing bond. And such contractor may prevent the filing of such claim by filing in like manner a bond conditioned for the payment of persons who may be entitled to file such claims. Suit may be brought on said bond by any claimant within one year after the cause of action accrues, and judgment shall be rendered against the principal and sureties for any amount due said claimant.

604.

SEC. 2155.

[19 G. A., ch. 8, repeals this section and enacts a substitute which is the same with the addition, after the word "filed" in the fifth line, of the words "*a notice which shall contain the facts required to be set out in said certificate.*"]

606.

SEC. 2171.

The property contemplated by the statute, for which a warehouse receipt may be issued, must be the property of the receipt-holder. If the receipt is not designed as evidence of title, but merely as security, the title of the property remaining in the person

issuing the receipt, it is void: *Sexton v. Graham*, 53-181.

Whether a warehouse receipt will be valid if the intention in executing it is to create a mere lien, *quare*: *Lowe v. Young*, 59-364.

609.

18 G. A., Ch. 25.

Prior to the enactment of this statute, a livery stable keeper acquired no lien as such upon property kept by him in the course of his business: *McDonald v. Bennett*, 45-456; *Munson v. Porter*, 19 N. W. Rep., 290.

If under any circumstances the lien should be deemed forfeited by

the assertion of a claim for a lien for too large an amount, the assertion should be clear and distinct, and operate to interfere in the present with a claimed right on the part of the owner: *Munson v. Porter*, 19 N. W. Rep., 290.

613.

SEC. 2202.

Where a wife places money in the hands of her husband, upon the agreement by him to account to her for it, the transaction creates a debt in favor of the wife against the husband which will constitute a valuable consideration for the conveyance of real estate by him to the wife, if such conveyance is made before any lien thereon attaches. And under peculiar facts held that the wife was not

estopped from holding such property as against creditors of her husband: *Jones v. Brandt*, 59-332.

The provisions of Rev. § 2499 as to liability of wife's property in her husband's hands for his debts, have no application in case of creditors of the husband becoming such after the taking effect of the present provisions of the Code: *Ibid.*

SEC. 2203.

This section renders invalid any agreement between husband and wife, even in contemplation of a separation, for the relinquishment of their respective interests (including dower interest) in each other's real

property. It changes the rule recognized in *Robertson v. Robertson*, 25-350, and *McKee v. Reynolds*, 26-578, both decided before its enactment (see notes to § 2206): *Linton v. Crosby*, 54-478.

SEC. 2204.

Where a wife knowingly permits her property to be applied by her husband to payment of debts contracted for family expenses for which it would be liable under § 2214, she does not thereby become a creditor of her husband for the amount so applied: *Courtright v. Courtright*, 53-57.

If property or money of the wife in the husband's hands is used by him with her knowledge and consent, for purposes connected with the support of the family without any agreement to repay her, she cannot recover therefor from his estate: *Patterson v. Hill*, 61-534.

614.

SEC. 2206.

See additional notes to § 2203.

SEC. 2207.

This section does not affect the common law rule of agency by which the wife, being abandoned by her husband without her fault, may pledge his credit for necessaries, and if left by him in the management of his business, may make all contracts reasonably incident to such management. Therefore, *held*, that a wife thus abandoned by her husband could

make a valid sale of a cow belonging to him for the purpose of procuring support, the cow being of such character as not otherwise to furnish family support, and that this might be done before the destitution of the family became complete and absolute: *Ranson v. Spangler*, 17 N. W. Rep., 173.

SEC. 2211.

The damages accruing to the estate of a married woman because of a wrongful act which causes her death, should not be assessed on the same basis as though she were unmarried, even though she may have been en-

gaged to some extent in a separate business. Damages should not be allowed in such case for services which would have been rendered for the benefit of her husband and family: *Stulmuller v. Cloughly*, 58-738.

615.

SEC. 2214.

To constitute a family expense, it is essential that the thing for which the expenditure was incurred should have been used or kept for use in the family: *Fitzgerald v. McCarty*, 55-702.

Where the husband, after the indebtedness was contracted, gave a note therefor, drawing interest at ten per cent. and providing for an attorney's fee, *held*, that a recovery could not be had against the wife for the attorney's fee nor for interest at that rate: *Ibid.*

Money borrowed for and used in purchasing articles which, if obtained on credit, would constitute proper items of family expense, cannot itself be treated as a family expense: *Davis v. Ritchey*, 55-719.

An action to make an indebtedness for family expenses a lien upon real property of the wife, may be brought in the county where the property is situated: See § 2378 and notes in supplement thereto.

Where the husband executes a note in payment of an account for family expenses, the statute of limitations as to the action against the

wife for such expenses, is suspended until the maturity of the note: *Davidson v. Biggs*, 61-309.

The fact that a creditor has brought an action against the husband alone and obtained judgment thereon by consent does not extend the statute of limitations as against the wife until the judgment shall become barred: *Polly v. Walker*, 60-86.

Where the husband purchased a watch and chain and other jewelry, a part of which was presented to his wife and the remainder used in the family, the wife was held liable therefor as family expenses, although she had no knowledge that they were not paid for until sometime afterwards: *Maguardt v. Flaughtr*, 60-148.

A father not being liable for necessities furnished an adult son or daughter who lives with him, is not liable for such necessities as being part of the family expenses. The purpose of this section is not to declare what charges or expenditures would be regarded as expenses of the family, but to provide a remedy therefor against both husband and

wife: *Blackley v. Laba*, 18 N. W. Rep., 658.

As husband and wife are equally bound for the support of the family, if money of the wife should with her consent be invested in the business of

carrying on a farm from which the support of the family is derived, it would be in effect devoted to the support of the family, and she cannot recover therefor from the husband's estate: *Patterson v. Hill*, 61-534.

617.

SEC. 2221.

The fact that the plaintiff is not a resident of the state cannot be taken advantage of by her for the purpose of defeating the judgment, where it

appears that she authorized suit to be brought and accepted alimony allowed by the decree: *Ellis v. White*, 17 N. W. Rep., 28.

SEC. 2222.

Defects in the verification of the petition are not jurisdictional and

cannot be urged in a collateral attack: *Ellis v. White*, 17 N. W. Rep., 28.

SEC. 2223.

There may be inhuman treatment endangering life although no physical injury is shown to have been sustained. Therefore, *held*, that where the husband had searched for a revolver with the intention of killing his wife, her life had been in danger within the meaning of the statute, and her husband had exhibited such a criminal disposition that her life would continue to be in danger if she continued to live with him, and she was entitled to a divorce: *Sackrider v. Sackrider*, 60-397.

Facts in a particular case *held* sufficient to show legal cruelty as herein specified; and further, *held*, that the condonement of the wrong was not sufficiently shown to defeat the right to divorce: *Sesterhen v. Sesterhen*, 60-301.

Facts in a particular case *held*

sufficient to constitute a willful desertion of the husband on the part of the wife: *Pilgrim v. Pilgrim*, 57-370.

In a particular case, *held*, that the evidence was not sufficient to show cruel and inhuman treatment entitling the wife to a divorce: *Rivers v. Rivers*, 60-378.

Where it appeared that defendant was convicted on an indictment for felony but the cause was appealed, and at the time of the trial in the divorce suit such appeal was undetermined, *held*, that there was no ground for divorce upon such conviction: *Ibid.*

The causes enumerated in this section are the only ones which will justify either party to the marriage in refusing to live with the other: *York v. Ferner*, 59-487.

618.

SEC. 2226.

Where the wife brings action for alimony without divorce, a temporary allowance may be made for the prosecution of the action in the same manner as is provided by this section in proceedings for divorce: *Finn v.*

Finn, 17 N. W. Rep., 739.

The proof of marriage in a particular case, *held*, sufficient to authorize the allowance of temporary alimony: *Smith v. Smith*, 61-138.

619.

SEC. 2227.

The attachment authorized by this section may be levied on the home-

stead, and may in a proper case be granted in suit to annul a legal mar-

riage as well as in one for divorce: *Daniels v. Morris*, 54-369.

The provisions of the Code relating to attachment in ordinary civil cases are not applicable: *Smith v. Smith*, 61-138. In a particular case, held, that an attachment

without a bond was properly allowed: *Ibid.*

The remedy by attachment is not exclusive of that by injunction, to restrain the disposition of property by the defendant: *Wharton v. Wharton*, 57-696.

SEC. 2229.

Where the action for divorce is brought by a resident of one state, in the courts of that state, against a non-resident, and service is had by publication only, without appearance by defendant, the court acquires jurisdiction only to declare the *status* of the parties before it, but cannot render a valid decree as to the custody of minor children who are non-residents of the state where the decree is rendered: *Kline v. Kline*, 57-386.

The party to whom the divorce is granted cannot have any further right or interest in the property of the other party than that which is given under this section, and cannot claim any share by way of dower in case of survival: *Marvin v. Marvin*, 59-699; *Boyles v. Latham*, 61-174.

It is competent for the court to set apart for the plaintiff a specific portion of the defendant's estate as alimony, and this may be done even though no prayer to have this specific property set off as alimony is contained in the petition, and notice of the action is served by publication only: *Twing v. O'Meara*, 59-326.

Alimony is rarely and only under

peculiar circumstances granted to the party in fault, even when that party is the wife, and where a suit was brought by the husband against the wife for divorce on the ground of inhuman treatment, and the wife in a cross-petition asked divorce from the husband on the same ground, and divorce was granted to the wife and denied to the husband, held, that it was error to allow to the husband a sum as alimony and make it a lien on the homestead, which was in the wife's name and acquired from her separate means: *Barnes v. Barnes*, 59-456.

Under particular circumstances, held, that the allowance for alimony was not excessive, and further, held, under peculiar facts indicating fraud on the part of the mortgagee, and in view of the further fact that the wife had not joined in such mortgage and therefore had a dower interest superior thereto, that the decree directing that the allowance of alimony should be a lien upon the premises prior to a previous mortgage was not erroneous: *Sesterhen v. Sesterhen*, 60-301.

621.

SEC. 2236.

In a proper case an attachment may issue as provided in § 2227 in cases of divorce: *Daniels v. Morris*, 54-369.

SEC. 2238.

A minor may disaffirm his contract before attaining majority, as well as during a reasonable time thereafter: *Childs v. Dobbins*, 55-205.

Disaffirmance by an action brought three or four years after plaintiff, a female, attained her majority, the only excuse offered for the delay being that she was informed by her mother and neighbors that she could

not disaffirm the contract until her minor brother became of age, held, not within a reasonable time, especially in view of the further facts that she did not ask legal advice, and delayed at least three months after she was informed that she could disaffirm the contract before bringing action: *Green v. Wilding*, 59-679.

623.

SEC. 2241.

As between the father and mother of a child, the former has no paramount right to its custody, the controlling consideration in determining to which the custody will be awarded being the best interest of the child; and, *held*, that the custody of an unweaned infant fifteen months old was properly awarded to the mother: *The State v. Kirkpatrick*, 54-373.

The right of the parents to the custody of their child is not absolute under all circumstances. A parent can, by agreement, surrender the custody of his infant child so as to make the custody of him to whom he surrenders it legal, and when he does, either by abandonment or contract, surrender his present legal right to such custody, in all controversies subsequently arising in respect there-

to the matter of primary importance is the interest and welfare of the child: *Bonnett v. Bonnett*, 61-199.

In controversies as to the right of custody of a child the interest of the child is the controlling consideration: *Fonts v. Pearce*, 19 N. W. Rep., 854.

A step-father of minor children, who are members of his family, stands *in loco parentis* to such children, and under ordinary circumstances can make no claim for their support and maintenance, unless under peculiar circumstances: *Latham v. Myers*, 57-519; but he is under no obligation to preserve their property by paying off incumbrances thereon, and is not debarred from acquiring title thereto under foreclosure proceedings: *Otto v. Schlapkahl*, 57-226.

SEC. 2246.

A surety in a guardian's bond should not be absolutely discharged upon his application, upon the minor's coming of age. The most that he is entitled to is a conditional discharge. If after the majority of the ward and the final settlement with the guardian, the ward unreasonably delays to enforce what rights he may have

against sureties on the bond, he may, upon application of the sureties, be ordered to commence and prosecute proceedings within a time to be named, and in the event of a failure to do so the sureties may be regarded as discharged: *Vermilya v. Bunce*, 61-605.

624.

SEC. 2250.

This section modifies the common law rule as to the power of the guardian over the property of his ward. The guardian can only act in pursuance of the direction of the court

first obtained, and an act done without such direction will not bind the ward's property: *Bates v. Dunham*, 58-308.

SEC. 2253.

[19 G. A., ch. 100, § 1, amends this section by adding thereto the following:]

In all cases where a non-resident idiot, lunatic, or person of unsound mind has property in this state requiring care and protection, the circuit court in any county where such property or any part thereof is situated may appoint a guardian of the property of such person, who shall have the same power and authority in relation thereto, and be subject to the same liability, as the guardian of a resident minor.

SEC. 2254.

A failure to pay over money by the guardian will not constitute a breach of his bond until the guardianship accounts are settled, or until he has

failed to obey a mandate of the court requiring him to account: *Vermilya v. Bunce*, 61-605.

625.

SEC. 2258.

Where actual personal service of notice upon a minor was shown, and it appeared that the court had determined that the service had been duly made, as provided by law, and such determination was of record, *held*, that even though it did not appear that a copy of the petition was filed,

as required by this section, the proceedings were not void: *Bunce v. Bunce*, 59-533.

A general averment in the petition in regard to the necessity of the sale is sufficient to give a court jurisdiction, and probably would be held sufficient even on appeal: *Ibid.*

SEC. 2261.

Where jurisdiction has attached and a sale has been approved, it cannot be successfully attacked in a collateral proceeding alleging the want of a sale bond: *Bunce v. Bunce*, 59-533.

626.

SEC. 2263.

It is at least doubtful whether, between the time of sale and the approval of the deed, the purchaser has any taxable interest in the property sold: *Ordway v. Smith*, 53-589.

Under 12 G. A., ch. 86, which allowed the clerk of the probate court to transact, in the absence of the judge, all probate business not re-

quiring notice, subject to the supervision and approval of the judge, *held*, that the endorsement upon the deed of the approval by the clerk of the sale and deed, and the approval by the judge of the sale, when reported by the guardian, constituted a sufficient approval to render the deed valid: *Bunce v. Bunce*, 59-533.

SEC. 2266.

[19 G. A., ch. 100, § 2, amends this section by adding thereto the following:]

The foreign guardian of any non-resident idiot, lunatic or person of unsound mind may be appointed the guardian in this state of such ward by the circuit court, in like manner and with like effect in all cases where the foreign guardian of a non-resident minor could be appointed the guardian of such minor in this state. Such guardian shall have the same powers and be subject to the same liabilities as guardians of resident minors.

627.

SEC. 2272.

"Unsound mind" means something different from idiocy, lunacy, or insanity. Weakness is not necessarily unsoundness, but there may be a weakness short of idiocy, either

congenital or superinduced by disease or old age, that amounts to unsoundness: *Smith v. Hickenbottom*, 57-733.

631.

SEC. 2310.

The filing for record is as essential to the validity of the adoption as is the execution or acknowledgment; and where the instrument was not filed for record until after the death

of the person making the adoption, *held*, that it was not valid: *Tyler v. Reynolds*, 53-146. To same effect, see *Gill v. Sullivan*, 55-341, and *Shearer v. Weaver*, 56-578.

634.

SEC. 2312.

Following, *Murphy v. Creighton*, 45-179; *Lees v. Wetmore*, 58-170.

Where an action at law is brought against an administrator to enforce an indebtedness due from an estate, instead of being prosecuted by pro-

bate proceeding as a claim against the estate, the error is one as to the form of action only, to be corrected on motion under § 2519, and is not one affecting the jurisdiction, to be raised by demurrer: See note to that section.

SEC. 2313.

The hearing may be ordered to be had at a place other than the county seat, notwithstanding the provisions of § 192: *Casey v. Stewart*, 60-160.

SEC. 2314.

Where a probate court directed that notice of an application by the administrator for sale of the real property to pay debts of the estate should be served by publication for two weeks in a newspaper, which

order was complied with, held, that the court thereby acquired jurisdiction as against non-resident defendants to act upon such application: *Casey v. Stewart*, 50-160.

635.

SEC. 2317.

Jurisdiction of the probate court is not exclusive as to land belonging to an intestate, which is not required for the payment of debts and remains in the possession of the heirs after ad-

ministration is concluded, and an action against heirs in possession by a person claiming to be heir may be brought in another court: *In re Estate of Seaton*, 58-523.

SEC. 2319.

The fact that a court in granting administration upon the estate of a foreign decedent, appoints an administrator for the care of real estate

in that county, does not limit its jurisdiction under this section as to property in other counties of the state: *Lees v. Wetmore*, 58-170.

636.

SEC. 2326.

A will made in another state and valid where made, but not executed in compliance with the laws of this state, will not be effectual to dispose of real property situated here: *Lynch v. Miller*, 54-516.

A subscribing witness cannot testify as to his understanding of the purpose and object of making the will: *Stephenson v. Stephenson*, 17 N. W.

Rep., 456.

A contestant having admitted that testator signed the paper purporting to be his will, and the same was properly witnessed, should not be permitted to introduce testimony tending to show that the will was not witnessed at the request of testator: *Ibid.*

SEC. 2327.

The fact that a husband is a legatee under the will does not render the wife an incompetent or interested witness thereto: *Hawkins v. Hawkins*, 54-443.

A corporator in a charitable corporation, in which it is not contemplated that any profits shall arise,

whose only interest therein is contingent upon a possible termination of the corporation and division of its assets, has no such interest as to be disqualified from being a witness to a will in which a bequest to such corporation is made: *Quinn v. Shields*, 17 N. W. Rep., 437.

SEC. 2329.

When the statute provides the manner in which a will may be revoked, that manner must be pursued. Scrolls drawn across the signature, which do not obliterate it nor render it illegible, do not constitute a destruction of the will, and, therefore, do not amount to a revocation unless witnessed, as required in the following section: *Gay v. Gay*, 60-415.

When an act of destruction or cancellation is sufficient to work a revocation, if done with that intent, the declarations of the testator may

be admissible to show the intent, but when the act does not amount to a revocation, the declarations of the testator are not admissible to prove the revocation: *Ibid.*

The birth of a child to the testator operates as a revocation of a will previously made: *Alden v. Johnson*, 18 N. W. Rep., 696; and the same rule holds in case of the birth and recognition of an illegitimate child by its father: *Milburn v. Milburn*, 60-411.

637.

SEC. 2340.

The parties may, under this section, demand a jury trial as a matter of right, and the verdict of the jury, in such cases, will be as conclusive as is the verdict of the jury in an action at law. It cannot be treated like a

verdict upon issues in chancery, which were referred to a jury for the purpose of informing the conscience of the court: *Collins v. Brazill*, 19 N. W. Rep., 338.

638.

SEC. 2347.

The provisions of this section, as to removal from the state, apply also to administrators. In ordinary cases a non-resident should not be appointed

administrator, although otherwise entitled under § 2:54: *In re Estate of O'Brien*, 19 N. W. Rep., 797.

639.

SEC. 2350.

Persons to whom property is bequeathed in trust, to be applied as directed in the will, are legatees, and not trustees, within the meaning of

this section, and the probate court cannot require them to give bonds as here provided: *Perry v. Drury*, 56-60.

SEC. 2352.

The ancillary administrator should proceed without reference to the condition of the principal estate, at least until such condition is shown: *Ash-ton v. Miles*, 49-564.

Under provisions of Rev. §§ 2328-

31, held, that a person appointed by a proper court of this state as executors of a foreign will, might exercise the powers of discretionary sale conferred by such will upon the regular executors: *Lees v. Wetmore*, 58-170.

640.

SEC. 2353.

The probate of a foreign will may be set aside in an original proceeding, on the ground that the will is not in conformity to the requirements of the law of this state: *Lynch v. Miller*, 54-516.

In a proceeding in probate court

to obtain an interpretation of the will, a minor defendant, represented by a guardian *ad litem*, may, by cross-bill, seek to have the will set aside as invalid: *Kelsey v. Kelsey*, 57-833.

SEC. 2354.

The court has some discretion as to appointing a person designated by this section, and may properly refuse to make the appointment where the party is a non-resident: *In re Estate of O'Brien*, 19 N. W. Rep., 797.

641.

SEC. 2366.

This provision as to giving notice is directory, and omission to give the notice does not have the effect to annul the appointment, or prevent the administrator from discharging the duties pertaining thereto: *Johnson v. Barker*, 57-32.

SEC. 2367.

Where it appeared that administration on the estate of one dying out of the state was granted after five years from the time of his death, *held*, that it would be presumed that it was

shown to the court that such grant of administration was within five years from the time decedent's death was known: *Lees v. Wetmore*, 58-170.

643.

SEC. 2371.

Failure to inventory and appraise the personal property thus to be set apart to the widow will not defeat her absolute ownership thereof, nor its exemption in her hands: *Adkins v. Breeding*, 56-26.

As to who is deemed head of a family, so that upon his decease his

widow may claim property as exempt, see § 3072 and notes: *Linton v. Crosby*, 56-386.

It is doubtful, to say the least, whether the husband can by will deprive his widow of personal estate which, in his hands, was exempt from execution: *Linton v. Crosby*, 61-293.

SEC. 2372.

The administrator is charged with the duty of collecting life insurance and distributing it to the proper persons, and is liable on his bond for failure to do so: *Kelley v. Mann*, 56-625.

This section contemplates a case where the policy is payable to deceased or his legal representative.

If payable to another person for the use and benefit of such person, it cannot be otherwise disposed of by will: *McClure v. Johnson*, 56-620.

Proceeds of life insurance in the hands of the beneficiary are subject to his debts: *Murray v. Wells*, 53-256.

SEC. 2375.

Under particular facts, *held*, that the supreme court would not interfere with an order refusing to make an allowance to the widow: *Caldwell v. Estate of Caldwell*, 54-456.

The allowance provided herein for temporary support where necessary, is no part of the widow's dower or inheritance, but something entirely distinct, and the right thereto is not relinquished by an ante-nuptial release of all rights of dower and inheritance as the widow and heir of deceased: *Mahaffy v. Mahaffy*, 17 N. W. Rep., 46.

While the primary idea of the statute is that specific property must be set off, yet, in case it is not possible,

the court may charge the executor with making money payments, and that, too, regardless of the question as to whether he has the requisite amount of money in his hands at that time, if there is property which the executor may convert into money for the purpose of making such payments. Sec. 2377 contemplates that the allowance may, upon a proper application and showing, be reduced. It should not ordinarily be paid in advance, but a reasonable opportunity should be left to modify and reduce the allowance in case it should be found necessary to do so: *Estate of McReynolds*, 61-585.

SEC. 2377.

A reduction of the allowance can only operate upon an unexpended balance thereof. The widow cannot be required to account for or pay back any portion already expended: *Harshman v. Slonaker*, 53-467.

644.

SEC. 2379.

The finding of the court upon such proceeding cannot be pleaded in bar of an action by the administrator to recover the property of the estate: *Ivers v. Ivers*, 17 N. W. Rep., 149.

645.

SEC. 2388.

Although the general rule as to time within which application to sell real estate is to be made be as stated in *McCrary v. Tasker*, 41-255, nevertheless matters excusing a delay beyond that time may be set up in the petition making application for leave to sell, and proved: *Conger v. Cook*, 56-117. And a judgment ordering a sale cannot be collaterally attacked, although rendered nine years or more after the death of intestate: *Stanley v. Noble*, 59-666.

Allegations in a petition that no personal estate had come into the hands of the administrator, and that there were debts remaining unpaid, held, sufficient to sustain the jurisdiction of the court in ordering a sale: *Ibid.*

SEC. 2389.

The judgment of the court, where application for a sale has been properly made, as to the sufficiency of notice of the application as here required, and of the sale, is conclusive as against a collateral attack: *Lees v. Wetmore*, 58-170.

A notice in a particular case, attacked on the ground of error in naming the decedent and in describing the land to be sold, held sufficient: *Stanley v. Noble*, 59-666.

648.

SEC. 2408.

The claim filed takes the place of a petition, and is to be regarded as a statement of the cause of action against the estate, and must contain all the averments necessary to show such cause of action: *Bremer Co. v. Curtis*, 54-72.

All that is required in the first instance of the claimant is to make out, verify and file his claim. The administrator may then approve or allow it, if he sees proper; otherwise it is deemed denied (§ 2410). But before the court can obtain any juris-

diction or power to decide as to the correctness of the claim, notice must be served on the administrator. The allowance by the administrator, after filing and before notice, of a part of the claim, is not an adjudication as to the balance, and is not binding on claimant, and he may prosecute his demand as to the balance: *Smith v. McFadden*, 56-482.

Where the claim against the estate grew out of a contract upon which the testator was jointly liable with another, and action was brought

against the survivor and the executors of decedent jointly, in the same court in which the claim against the surety might have been filed, *held*, that the

bringing of such action was a sufficient filing of the claim against the estate: *Moore v. McKinley*, 60-367.

649.

SEC. 2411.

Either party is, under this section, as construed in connection with other sections of the Code, entitled to a ju-

ry trial upon demand. The trial may be by the court, if the parties waive a jury: *Ingham v. Dudley*, 60-16.

SEC. 2412.

Power is by this section conferred upon a probate court to appoint a referee in the matter of the examination of administrators' accounts: *In*

re Heath's Estate, 58-26.

As to reference in general, see §§ 2815-2830.

650.

SEC. 2418.

The purchase and erection of a tombstone is a proper expenditure to be made by an executor, as pertaining to the funeral expenses, and such expenditure may be made without any direction by the will, and notwithstanding the estate may be insolvent. The propriety of obtaining a tombstone, and the amount to be

expended therefor, may very properly be left to the court having the supervision of the settlement of the estate, and unless the provision thus made shall appear to be unreasonable or excessive, the persons in interest should be bound thereby: *Crapo v. Armstrong*, 17 N. W. Rep., 41; *Lutz v. Gates*, *Id.*, 747.

SEC. 2420.

A judgment rendered against deceased in his life-time must be paid in the first instance out of the personal estate, and must therefore be filed and allowed as other claims of the fourth class, and becomes barred if not thus filed and allowed within proper time. When the personal estate is insufficient to satisfy it, action

may be brought to enforce payment by sale of real estate. See § 3092; *Bayliss v. Powers*, 17 N. W. Rep., 907.

The fact that a contingent claim is allowed does not entitle the claimant to an order of payment until the right of the claimant becomes absolute: *Blanchard v. Conger*, 61-153.

SEC. 2421.

There being no statutory bar as to the proving of claims of the third class, they may be proved up after the expiration of the twelve months: *Smith v. McFadden*, 56-432.

A claim of fourth class must be filed and proved within the twelve months: *Brownell v. Willians*, 54-353.

Where the claim is filed in time to have it properly allowed within the year, the fact that its allowance is postponed beyond the year, by a continuance granted to defendant to enable defense to be made, will be a ground of equitable relief from the bar of the statute: *Ingham v. Dudley*, 60-16.

Where it appeared that a claim

against the estate was placed in the hands of attorneys in due time for filing, and that they delayed filing upon request of an attorney who had been acting for the administratrix, upon representation by him that he would see the administratrix with a view to an adjustment of the matter, and was then filed three months before the expiration of the limitation, but at such time that the term of court, in which it would come up for allowance, did not commence until a few days after the expiration of the year, *held*, that in view of the fact that the estate remained unsettled and was solvent, a sufficient excuse was shown for the slight delay and that the court erred in rejecting

the claim: *Pettus v. Farrell*, 59-296.

Where a claim was left with attorneys more than six months before the expiration of the time for filing the same, and failure to file

resulted from accident or mistake on the part of such attorneys, held, that there was a sufficient ground for equitable relief from the bar of the statute: *Wilcox v. Jackson*, 57-278.

652.

SEC. 2436.

The widow's distributive share of personal property cannot be affected by will: (*Overruling In the matter of the Estate of Davis*, 38-24.) *Ward v. Wolf*, 56-465; *Linton v. Crosby*, 61-293, and held, that under this fact that a widow, who, under this rule, was entitled to a share of personal property notwithstanding the will of her husband which made

other disposition of it, made no claim thereto until the executor had paid out a large portion of the personal estate in legacies, &c., and only asserted her right in opposition to the will after the decision in the case of *Ward v. Wolf*, *supra*, was announced, was not estopped from doing so: *Linton v. Crosby*, 61-293, and *Same v. Same*, *Id.*, 401.

653.

SEC. 2440.

The widow's share in property other than the homestead should bear its proportion of mortgage indebtedness to which she has assented by joining in the execution of the mortgage, and she can only claim, in such case, her distributive share of the proceeds of the property, after the mortgage indebtedness has been satisfied therefrom: *Trowbridge v. Sypher*, 55-352; *McGlothlen v. Hite*, 55-392; but when the portion set off to the widow for dower includes the homestead, such homestead is not to be subjected to the payment of a mortgage covering it together with other property, though the widow joined in such mortgage, until such other property is exhausted: *Wilson v. Hardisty*, 48-515; *McGlothlen v. Hite*, *supra*; *Wells v. Wells*, 57-410.

Lucas v. Sawyer, 17-517, followed: *Parker v. Small*, 55-732.

The statute of limitations does not run against an unrelinquished right of dower, before it becomes vested by death of the husband or wife: *Hurleman v. Hazlett*, 55-256.

The doctrine of *Robertson v. Robertson*, 25-350, that a relinquishment of dower in an agreement to separate is binding, is changed by § 2203. Such a relinquishment is no longer valid: *Linton v. Crosby*, 64-478.

The widow's dower interest is only one-third. Though, she may, under

§ 2455, become entitled to a one-half interest in property of her husband, the excess over one-third is not dower interest, and may be defeated by will, by debts, &c.: See notes to that section.

A wife who obtains a divorce from her husband thereupon loses all claim to a share in his property should she survive him: *Marrin v. Marrin*, 59-899; *Boyles v. Latham*, 61-174.

Where a man against whom a decree of divorce had previously been rendered at the suit of a woman claiming to be his wife, made an exchange of land with another who knew the fact of such divorce and believed that the party against whom it was rendered was therefore unmarried, and the transaction of exchange was effected through a son, by a former marriage, of the party against whom the divorce was rendered, such son and agent remaining silent as to the fact that his mother was yet living; held, that such son was estopped from claiming against the party with whom the exchange of property was made, that his mother was living in another state at the time that such exchange was made, and that she survived his father and became entitled to a dower interest in such property which descended to him as her surviving heir: *Williams v. Wells*, 16 N. W. Rep., 513.

A sale of real property by an as-

signee under an assignment for the benefit of creditors is a judicial sale within the terms of this section, and bars any contingent right of dower in the property: *Stidger v. Evans*, 19 N. W. Rep., 850.

If a widow, entitled to dower, fails to have her interest defined and set apart in her lifetime her heirs may recover the same after death: *Potter v. Worley*, 57-66.

Where the wife voluntarily unites in the conveyance of real property and the proceeds are invested by the husband in other property, title of which is taken in the name of a third person, the wife has no cause of action against her husband for the pro-

tection of her dower right: *Beck v. Beck*, 19 N. W. Rep., 876.

Where mechanics' liens and taxes on decedent's real property have been paid with money provided from the personal estate, such liens and taxes should not be deducted from the widow's share of the real estate: *Conger v. Cook*, 57-49; *Linton v. Crosby*, 61-293.

The widow's share in real property is subject to a *pro rata* liability for mortgages upon the whole of the property in which she joined. In case of a homestead her share therein should only be subjected to a *pro rata* liability for the mortgages upon it alone: *Conger v. Cook*, 57-49.

656.

SEC. 2452.

The widow's consent must be made of record within the six months. She will not be bound or estopped by a writing not so made of record: *Baldozier v. Haynes*, 57-683.

The provisions of a will considered, and held subject to the same construction as in *Cain v. Cain*, 23-31; *Van Guilder v. Justice*, 56-669.

This provision applies as well to a will executed before marriage as to one executed after marriage: *Ward v. Wolf*, 56-465.

The "widow's share" here referred to, means her "distributive share," as referred to in § 2437 and § 2441, and applies to her portion of personal property, as well as of real property; and this section prohibits a disposition by will of either personal or real property which operates to deprive the widow of her share therein (Overruling *Estate of Davis*, 36-24): *Ibid.*

It is only the widow's one-third, and not the whole of the one-half which she may be entitled to as distributive share under § 2455, that cannot be affected by will. See note

to that section.

It is not proper for a court upon proof that the surviving husband or wife had knowledge of the will from the first, and that it was in accordance with his wishes, to enter an order more than six months after the death of the party whose consent is thus established to take under the will. After the expiration of six months, consent alone does not defeat the party's rights. It cannot be claimed that if no notice be given, the consent may be entered at any time: *Houston v. Lane*, 17 N. W. Rep., 514.

Under the corresponding section in the revision, held that the acceptance of the provisions of a will would not bar a widow's right to dower where the provisions of the will are not inconsistent with her dower right: *Potter v. Worley*, 57-66.

Where a husband devises his real estate to his widow during her natural life such devise is not inconsistent with the dower right of the widow in the land devised: *Blair v. Wilson*, 57-177.

657.

SEC. 2454.

Where by a special act of another state, the adoption of a child was authorized, and it was declared that such child should inherit from the adopting parents, or either of them, as if she were their legitimate child, held, that such adopted child did not thereby become entitled by virtue of

this section to inherit property situated in this state, left by the father of her adopting father, dying in this state after having survived such adopting parents: *The Estate of Sunderland*, 60-730.

Where at the time of decedent's death, his son was already deceased,

held, that the widow of such son could not claim any interest in the estate by inheritance from a child of herself and such deceased son, said child having survived its father, but having died without issue before the

death of its grandfather. The statute only provides for inheritance by the parents of the *estate* of a child dying without issue: *Leonard v. Lining*, 57-648.

SEC. 2455.

The widow can only hold one-third free from decedent's debts and against his will. The balance of the one-half which she may be entitled

to under this section, she takes as any heir takes a distributive share: *Smith v. Zuckmeyer*, 53-14; *Linton v. Crosby*, 54-478.

658.

SEC. 2457.

Where intestate dies without issue, and his parents are both dead, it is immaterial which died first, and it is immaterial whether such parents, or either of them, made any disposition of their property by will, other than that which would have been made by law. The persons entitled to dis-

tributive shares in decedent's estate, take from him directly, and not through the parent, the supposition that such parent died in possession of the property being merely for the purpose of determining the descent: *Lash v. Lash*, 57-88.

SEC. 2459.

In a particular case, *held*, that the evidence established advancements to heirs such as to defeat their claim to

share in the intestate's real property: *Ramsey v. Abrams*, 53-512.

659.

SEC. 2465.

For the purpose of inheritance, an illegitimate child, when recognized by its father, stands on precisely the same footing as if it were legitimate, and the birth of such a child and its

recognition revoke a prior will in the same manner as the subsequent birth of a legitimate child: *Milburn v. Milburn*, 60-411.

660.

SEC. 2474.

Where a creditor has filed his claim and allowed the estate to be settled up and the administrator discharged, he cannot afterward, in an action against such administrator or heirs, subject to the payment of his claim property which he insists was fraudulently conveyed by decedent in his lifetime to such heirs for the purpose of defeating it. As he might, by proper proceedings, have had such property subjected

to the payment of his claim during the administration, he cannot after the estate has been settled, open up the settlement for that purpose. The settlement and discharge of the administrator is an adjudication not only that he has accounted for all property which came into his hands, but also that the estate has been properly administered upon: *Daniels v. Smith*, 58-577.

SEC. 2475.

A party seeking to avail himself of mistake or fraud under the preceding section, must allege sufficient reasons for not availing himself of these provisions for opening up the settlement, and if he asks equitable relief

on the ground of fraud, must set forth the fraudulent acts complained of, and show how he was deceived and misled thereby: *Kows v. Mowery*, 57-20.

Orders of court approving pro-

gressive reports must be regarded as | that they were incorrect and fraudu-
correct, and it is incumbent on the | lent, if so claimed: *In re Heath's*
heirs attacking the reports to show | *Estate*, 58-36.

661.

SEC. 2484.

An agent with whom notes are | ure to turn over said notes to a for-
left for collection by decedent in his | eign administrator without demand
lifetime does not become liable as | having been made for the same:
executor in his own wrong for fail- | *Darr v. Darr*, 59-81.

